

MONTANA LEGISLATIVE HISTORY

Chapter 622 19 83

Bill H 825 S _____

Original bill & history X c

H. Committee on Natural Resources

Hearing Date(s) Feb 18 ✓ c

no subcommittee minutes

Feb 21 ✓ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) Mar 11 ✓ c

Mar 17 ✓ Mar 12 ✓ c

Mar 14 ✓ c

Mar 15 ✓ c

Mar 16 ✓ c

3-17 ✓

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

Note: A Free Conference Committee was appointed, but its minutes were not recorded.

House Judiciary Apr 05

HB 821 -- FAGG, BARDANOUVE, MCCALLUM, ET AL. -- TO RELIEVE LOCAL GOVERNMENT FISCAL PROBLEMS; CREATING A LOCAL GOVERNMENT SERVICES EFFICIENCY INCENTIVE PROGRAM; AUTHORIZING A LOCAL OPTION INCOME TAX; APPROPRIATING FUNDS FOR LOCAL GOVERNMENT FISCAL RELIEF; AND PROVIDING AN EFFECTIVE DATE.

INTRODUCED: 02/15/83
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 02/15/83
HEARING: 2/19/83
DIED IN COMMITTEE

HB 822 -- DONALDSON -- TO PERMIT AN ELEMENTARY SCHOOL DISTRICT AND A HIGH SCHOOL DISTRICT REPRESENTING TWO SEPARATE SOCIAL SECURITY REPORTING ENTITIES TO MERGE INTO A SINGLE REPORTING ENTITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

INTRODUCED: 02/15/83
REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES: 02/15/83
HEARING: 2/18/83
REPORT: 02/18/83, DO PASS
2ND READING: 02/19/83, DO PASS AYES: 91; NAYS: 0
3RD READING: 02/22/83, DO PASS AYES: 99; NAYS: 0

TRANSMITTED TO SENATE: 2/22/83
REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES: 3/1/83
HEARING: 3/18/83
REPORT: 3/18/83, BE CONCURRED IN
2ND READING: 03/21/83 AYES: 48; NAYS: 0
3RD READING: 03/23/83 AYES: 50; NAYS: 0

RETURNED TO HOUSE: 03/23/83

TRANSMITTED TO GOVERNOR: 3/30/83
SIGNED: 4/2/83, CHAPTER 350

HB 823 -- ADDY -- GIVING THE DEPARTMENT OF LABOR AND INDUSTRY DISCRETION IN WHETHER TO INITIATE A CIVIL SUIT TO COLLECT UNEMPLOYMENT INSURANCE CONTRIBUTIONS; AMENDING BY REQUEST OF: THE DEPARTMENT OF LABOR AND INDUSTRY

INTRODUCED: 02/15/83
REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS: 02/15/83
HEARING: 2/19/83
DIED IN COMMITTEE

HB 824 -- HAND, HAZELBAKER, KEYSER -- TO APPROPRIATE \$500,000 TO THE DEPARTMENT OF ADMINISTRATION FOR DEVELOPMENT OF BANNOCK STATE PARK.

INTRODUCED: 02/15/83
REFERRED TO COMMITTEE ON APPROPRIATIONS: 02/15/83
HEARING: 4/13/83
DIED IN COMMITTEE

HB 825 -- G. JACOBSON, BERTELSEN, BARDANOUVE, ET AL. -- TO GENERALLY REVISE THE EMINENT DOMAIN LAWS

INTRODUCED: 02/15/83
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 02/15/83
HEARING: 2/18/83
REPORT: 02/22/83, DO PASS, AS AMENDED

2ND READING: 02/23/83, DO PASS AYES: 86; NAYS: 6
3RD READING: 02/23/83, DO PASS AYES: 90; NAYS: 3

TRANSMITTED TO SENATE: 2/23/83

REFERRED TO COMMITTEE ON JUDICIARY: 3/1/83

HEARING: 3/11/83

REPORT: 03/12/83, BE CONCURRED IN, AS AMENDED
ON MOTION, THAT THE BILL BE TAKEN FROM 2ND READING AND REREFERRED TO THE COMMITTEE
ON JUDICIARY: 03/15/83. MOTION PASSED UNANIMOUSLY.

REPORT: 3/18/83, BE CONCURRED IN, AS AMENDED

2ND READING: 03/22/83 AYES: 49; NAYS: 0

3RD READING: 03/24/83 AYES: 48; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 03/24/83

REFERRED TO COMMITTEE ON JUDICIARY: 03/31/83

HEARING: 4/5/83

REPORT: 4/5/83, BE NOT CONCURRED IN

2ND READING: 04/06/83, BE NOT CONCURRED IN AYES: 90; NAYS: 2

FREE CONFERENCE COMMITTEE APPOINTED: 04/06/83

FREE CONFERENCE COMMITTEE REPORT: 4/9/83

HOUSE

2ND READING: 04/12/83, ADOPTED AYES: 93; NAYS: 1

3RD READING: 04/13/83, ADOPTED AYES: 97; NAYS: 0

SENATE

2ND READING: 04/15/83, BE ADOPTED AYES: 49; NAYS: 0

3RD READING: 04/16/83, BE ADOPTED AYES: 48; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/21/83

SIGNED: 4/25/83, CHAPTER 622

HB 826 -- ELLISON -- PROVIDING FOR ESTABLISHMENT BY THE CHIEF OF POLICE OF THE WORK
PERIOD FOR POLICE OFFICERS AND OTHER POLICE DEPARTMENT PERSONNEL; AMENDING

INTRODUCED: 02/15/83

REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS: 02/15/83

HEARING: 2/19/83

REPORT: 02/19/83, DO PASS, AS AMENDED

2ND READING: 02/22/83, DO PASS AYES: 90; NAYS: 5

3RD READING: 02/23/83, DO PASS AYES: 95; NAYS: 5

TRANSMITTED TO SENATE: 02/23/83

REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS: 3/1/83

HEARING: 3/22/83

REPORT: 03/24/83, BE CONCURRED IN, AS AMENDED

2ND READING: 03/26/83 AYES: 32; NAYS: 9

3RD READING: 03/28/83 AYES: 45; NAYS: 2

RETURNED TO HOUSE WITH AMENDMENTS: 3/28/83

2ND READING: 04/05/83, BE CONCURRED IN AYES: 90; NAYS: 2

3RD READING: 04/06/83, BE CONCURRED IN AYES: 92; NAYS: 2

TRANSMITTED TO GOVERNOR: 04/14/83

SIGNED: 04/18/83, CHAPTER 562

HOUSE BILL NO. 825

INTRODUCED BY JACOBSEN, BERTELSEN, BARDANOUVE, KEMMIS,
OCHSNER, DONALDSON, REAH, SOLBERG, BACHINI,
ASAY, SHONTZ, SCHYE, THOFT

IN THE HOUSE

February 15, 1983	Introduced and referred to Committee on Natural Resources.
February 22, 1983	Committee recommend bill do pass as amended. Report adopted. Bill printed and placed on members' desks.
February 23, 1983	Second reading, do pass. Considered correctly engrossed. Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Judiciary.
March 12, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 15, 1983	On motion, taken from second reading, and rereferred to Committee on Judiciary.
March 18, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 22, 1983	Second reading, concurred in.
March 24, 1983	Third reading, concurred in. Ayes, 48; Noes, 0.

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IN THE HOUSE

March 24, 1983

Returned to House with amendments.

March 31, 1983

Second reading, pass consideration.

On motion, Senate amendments taken from second reading and referred to Committee on Judiciary.

April 6, 1983

Committee recommend Senate amendments be not concurred in.

On motion, Senate amendments placed on second reading this day.

Second reading, amendments not concurred in.

On motion, Free Conference Committee requested and appointed.

April 9, 1983

Free Conference Committee reported.

April 12, 1983

Second reading, Free Conference Committee report adopted.

April 13, 1983

Third reading, Free Conference Committee report adopted.

April 16, 1983

Free Conference Committee report adopted by Senate.

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *825*
 2 INTRODUCED BY *Stephen Banteloni, Brandon Kemmis*
 3 *Stephen Banteloni, Brandon Kemmis*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 EMINENT DOMAIN LAWS; AMENDING SECTIONS 70-30-101, 70-30-102,
 6 70-30-110, 70-30-111, 70-30-201 THROUGH 70-30-203,
 7 70-30-205, 70-30-207, 70-30-301, 70-30-302, 70-30-304,
 8 70-30-308 THROUGH 70-30-310, AND 70-30-313, MCA; REPEALING
 9 SECTIONS 69-13-104, 70-30-104, 70-30-204, 70-30-206,
 10 7-30-305, 70-30-311, 70-30-321, 70-30-322, 82-2-201 THROUGH
 11 82-2-212, 82-2-221 THROUGH 82-2-224, AND 82-10-301 THROUGH
 12 82-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 13
 14 WHEREAS, Title 70, chapter 30, MCA, is in need of
 15 revision; and
 16 WHEREAS, the Legislature finds that the rights, duties,
 17 and procedures set out in this act are necessary to
 18 implement the provisions of Article II, section 29, of the
 19 Montana Constitution.
 20 THEREFORE, it is the intent of the Legislature that the
 21 use of the power of eminent domain be limited to the state,
 22 its political subdivisions, and certain other entities; that
 23 the power of eminent domain be used for purposes that
 24 directly benefit and are available to the public; that
 25 persons whose property is taken be accorded the same rights

1 and obligations as other civil litigants; that condemners
 2 may acquire only the minimum property rights necessary for
 3 the public use involved and must pay to the condemnee the
 4 value of the property as determined by its highest and best
 5 use; and that condemners have no right to enter the property
 6 sought to be condemned until a court determines that the
 7 exercise of the right of eminent domain is proper and in
 8 accordance with the requirements of Title 70, chapter 30,
 9 MCA, as amended by this act.

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 70-30-101, MCA, is amended to read:

13 "70-30-101. Eminent domain defined --public use--
 14 extent of taking. (1) Eminent domain is the right of --the
 15 state to take private property for public use. This right
 16 may be exercised only by the state; local governments;
 17 authorities; districts; and school districts; rural electric
 18 and telephone cooperatives; and publicly regulated utilities
 19 and only in the manner provided in this chapter. When the
 20 legislature provides by statute that a use, purpose, object,
 21 or function is one for which the power of eminent domain may
 22 be exercised, such action is a declaration by the
 23 legislature that the use, purpose, object, or function is a
 24 public use.

25 (2) When private property is taken by eminent domain,

-2- INTRODUCED BILL

HB 825

only the minimum estate in land needed for the purpose of the taking may be taken.

(3) If the use for which property is taken ends, the estate taken or the remainder of it reverts back to the person from whom the property was taken.

(4) If the time during which property is or may be taken for a particular public use is limited by statute, agreement, an instrument of taking, or a court order, that time may be extended if the person from whom the property was taken agrees or if the district court for the judicial district in which the property is located finds that the particular public use for which the property was taken is still active and necessary.

(5) (a) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the condemnor must offer to acquire the remnant and may acquire it by purchase or by condemnation if the owner consents.

(b) For purposes of this section, "uneconomic remnant" means a remainder estate in land condemned or a piece of land not condemned that is, following a partial taking of property, of little value.

(6) When an offer to purchase property or a taking of property occurs, the estate taken must be valued on the basis of its highest and best use, and it may not be presumed that the current use is the highest and best use.

The person seeking to take property and the person from whom the property is to be taken must at all times make a good faith effort to reach a result that is satisfactory to both parties."

Section 2. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. (1) Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city or town, or school district; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys and all other public uses for the benefit of any county, city, or town or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be

1 authorized;

2 ~~{4}--wharvesy--docks--piers--chutesy--boomsy--ferriesy~~
3 ~~bridgesy--of--all--kindsy--private-roadsy--plank-and-turnpike~~
4 ~~roadsy--railroadsy--canalsy--ditchesy--flumesy--aqueductsy--and~~
5 ~~pipes-for-public-transportationy-supplying-minesy--millsy--and~~
6 ~~smelters-for-the-reduction-of-ores-and-farming-neighborhoods~~
7 ~~with--water--and--drainage--and--reclaiming--lands--and--for~~
8 ~~floating--logs-and-timber-on-streams-not-navigable-and--sites~~
9 ~~for--reservoirs--necessary-for-collecting-and-storing-water~~
10 ~~However--such-reservoir-sites--must--possess--a--public--use~~
11 ~~demonstrable--to--the-district-court-as-the-highest-and-best~~
12 ~~use-of-the-lands~~

13 {5}(d) ~~roadsy--tunnelasy--ditchesy--flumesy--pipesy--and~~
14 ~~dumping-places-for-working-minesy--millsy--or-smelters-for-the~~
15 ~~reduction--of--oresy--also-outletsy--natural-or-otherwisey--for~~
16 ~~the-flowy-deposity-or-conduct-of-tailings-or--refuse--matter~~
17 ~~from--minesy--millsy--and-smelters-for-the-reduction-of-oresy~~
18 ~~also-on-occupancy-in-common-by-the-owners-or-the--possessors~~
19 ~~of--different--mines--of-any-place-for-the-flowy-deposity-or~~
20 ~~conduct-of-tailings-or--refuse--matter--from--their--several~~
21 ~~minesy--millsy--or--smelters-for-reduction-of-ores-and-sites~~
22 ~~for reservoirs necessary for collecting and storing water.~~
23 However, such reservoir sites must possess a public use
24 demonstrable to the district court as the highest and best
25 use of the land.

1 ~~{6}(e)~~ private roads leading from highways to ~~private~~
2 ~~property, including residences or farms;~~

3 ~~{7}(f)~~ telephone or electric light lines;

4 ~~{8}--telegraph--lines~~

5 ~~{9}(g)~~ sewerage of any city, county, or town or any
6 subdivision thereof, whether incorporated or unincorporated,
7 or of any settlement consisting of not less than 10 families
8 or of any public buildings belonging to the state or to any
9 college or university;

10 ~~{10}(h)~~ tramway lines;

11 ~~{11}(i)~~ electric power lines;

12 ~~{12}--logging-railways~~

13 ~~{13}--temporary--logging-roads--and--banking--grounds--for~~
14 ~~the--transportation--of--logs--and--timber-products--to--public~~
15 ~~streamsy--takesy--millsy--railroadsy--or--highways--for--such--time~~
16 ~~as--the--court--or--judge--may--determine--providedy--the--grounds~~
17 ~~of--state--institutions--be--excepted~~

18 ~~{14}--underground-reservoirs--suitable--for--storage--of~~
19 ~~natural-gas~~

20 ~~{15}--to--mine--and--extract--oresy--metalsy--or--minerals~~
21 ~~owned-by-the-plaintiff--located-beneath-or-upon--the--surface~~
22 ~~of-property-where-the-title-to-said-surface-vests-in-others~~
23 ~~However--the-use-of-the-surface-for-strip-mining-or-open-pit~~
24 ~~mining--of-coal--thevy--any-mining-method-or-process-in-which~~
25 ~~the-strata-or-overburden-is-removed-or-displaced-in-order-to~~

extract the coal} is not a public use} and eminent domain
may not be exercised for this purpose}

{to} (1) to restore and reclaim lands strip or
underground-mined for coal and not reclaimed in accordance
with Title 82, chapter 4, part 2, and to abate or control
adverse affects of strip or underground mining on those
lands.

(2) The use of the surface for strip mining or open
pit mining of coal (i.e., any mining method or process in
which the strata or overburden is removed or displaced in
order to extract the coal) is not a public use, and eminent
domain may not be exercised for this purpose."

Section 3. Section 70-30-110, MCA, is amended to read:

"70-30-110. Survey and location of property to be
taken --- greatest public good --- least private injury ---
damages --- entry orders. In all cases where land is required
for public use, the state or its agents in charge of such
use may survey and locate the same but it must be located
in the manner which will be most compatible with the
greatest public good and the least private injury and
subject to the provisions of 70-30-206. The state or its
agents in charge of such public use may enter upon the land
and make examinations, surveys and maps thereof and such
entry shall constitute no cause of action in favor of the
owners of the land except from injuries resulting from

negligence, wantonness or malice. (1) A condemnor and its
agents and employees may enter upon real property and make
surveys, examinations, photographs, tests, soundings,
borings, and samplings or engage in other activities for the
purpose of appraising the property or determining whether it
is suitable and within the power of the condemnor to take
for public use, if the entry is:

(a) preceded by notice to the owner and any other
person known to be in actual physical occupancy of the
property of the time, purpose, and scope of the planned
entry and activities:

(b) undertaken during reasonable daylight hours;

(c) accomplished peaceably and without inflicting
substantial injury; and

(d) not in violation of any other law.

(2) The entry and activities authorized by this
section do not constitute a trespass, but the condemnor is
liable for resulting damages.

(3) If reasonable efforts to accomplish a lawful entry
or to perform authorized activities upon real property have
been obstructed or denied, the condemnor may, upon notice to
the owner and occupier of the property, apply to the
district court for the judicial district in which the
property or any part is located for an order permitting
entry. Unless good cause to the contrary is shown, the court

shall, following a hearing, make an order permitting and describing the purpose of the entry and setting forth the nature and scope of activities the court determines are reasonably necessary and authorized to be made upon the property. The order may include terms and conditions with respect to the time, place, and manner of entry and authorized activities upon the property that will facilitate the purpose of the entry and minimize damage, hardship, and burden.

(4) An order permitting entry must include a determination by the court of the probable amount that will fairly compensate the owner and any other person in lawful possession or physical occupancy of the property for physical injury to the property and for substantial interference with its possession or use found likely to be caused by the entry and activities authorized by the order and must require the condemnor to deposit that amount with the court before entry. Unless sooner disbursed by court order, the amount deposited shall be retained on deposit for 6 months following termination of the entry. The court may, for good cause, extend the period of retention."

Section 4. Section 70-30-111, MCA, is amended to read:

"70-30-111. Facts necessary to be found before condemnation. Before property can be taken, it must appear:

(1) that the use to which it is to be applied is a

public use authorized by law;

(2) that the taking is necessary to such use;

(3) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use; and

(4) that a good faith effort to purchase the minimum estate required at a valuation equal to the highest and best use has been made and failed."

NEW SECTION. Section 5. Purchase of property. An action to condemn property may not be maintained unless the condemnor has made a good faith effort to purchase the minimum estate necessary for the public use involved, at a valuation at least equal to the highest and best use.

NEW SECTION. Section 6. Coercion prohibited. A condemnor may not take any coercive action to compel a sale, a particular sale price, or any condition or clause of a sale agreement.

Section 7. Section 70-30-201, MCA, is amended to read:

"70-30-201. Applicable rules of practice. Except as otherwise provided in this chapter, the provisions of ~~Titles 25 and 26, including the Montana Rules of Civil Procedure and the Montana Rules of Evidence,~~ are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter."

Section 8. Section 70-30-202, MCA, is amended to read:

"70-30-202. Jurisdiction and venue -- complaint and summons required. All proceedings under this chapter must be brought in the district court of the county judicial district in which the property or some part thereof is situated. They must be commenced by filing a complaint and issuing a summons thereon."

Section 9. Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. The complaint must contain:

(1) the name of the ~~corporation, association, commission, entity~~ or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(2) the names of all owners, mortgagees, and lienholders of record and any other claimants of the property of record, if known; or a statement that they are unknown, who must be styled defendants;

(3) a statement of the right of plaintiff;

(4) if a right-of-way is sought, the complaint must show the location, general route, and termini and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding;

(5) a description of the estate desired in each piece of land ~~sought to be taken~~ and whether the same includes the whole or only a part of the entire parcel or tract and a statement that the estate or estates desired are the minimum

~~necessary estates. All~~ The court may require that all parcels lying in the county judicial district and required for the same public use may be included in the same or separate proceedings, ~~at the option of the plaintiff but the court may consolidate or separate them to suit the convenience of the parties.~~ When application for the condemnation of a right-of-way for the purposes of sewerage is made on behalf of a settlement or a town or a county, the county commissioners of the county may be named as plaintiff.

~~(6) if a sandy stratum or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir in addition the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest that the underground reservoir is suitable and practicable for natural gas storage that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights~~

~~and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 62-10-304;~~

(6) a statement of the public use involved; and

(7) a statement that a good faith effort to purchase the minimum estate necessary has been made and has failed."

Section 10. Section 70-30-205, MCA, is amended to read:

"70-30-205. Who may defend -- answer. (1) All persons named in the complaint, in occupation of or claiming an interest in any of the property described in the complaint or in the amount to be awarded for the taking thereof, though not named, may appear.

(2) The answer of each appearing defendant must be filed and served upon the plaintiff or upon any attorney for plaintiff within a period of 15 days after the service of summons and complaint must contain a demand that any land or estate the defendant wishes to be condemned as an uneconomic remnant be condemned as such. The answer of each appearing defendant must contain a specific allegation as to the total amount which such defendant claims is reasonable and just for the taking of such defendant's lands or other real property or interest therein"

Section 11. Section 70-30-207, MCA, is amended to

read:

"70-30-207. Appointment of commissioners -- qualifications -- affidavit. (1) Immediately upon making and entering the preliminary condemnation order filing of the last answer, the judge must meet with the respective parties or their attorneys of record for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of an estate in such property. The appointment of condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners.

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

12

1 {3}--Each--commissioner--shall--possess--the--following
2 qualifications:

3 {a}--a--citizen--of--the--United--States--and--over--18--years
4 of--age;

5 {b}--that--he--is--not--more--than--70--years--of--age;

6 {c}--that--he--is--in--possession--of--natural--faculties--of
7 ordinary--intelligence--and--not--decrepit;

8 {d}--that--he--is--possessed--of--sufficient--knowledge--of
9 the--English--language;

10 {e}--that--he--was--assessed--on--the--last--assessment--roll
11 of--a--county--within--the--judicial--district--in--which--the--action
12 is--pending;

13 {f}--that--he--has--not--been--convicted--of--misdemeanor--in
14 office--or--any--felony--or--other--high--crime;

15 {g}--that--he--is--not--related--within--the--sixth--degree--to
16 any--party;

17 {h}--that--he--does--not--stand--in--the--relation--of--guardian
18 and--ward--master--and--servant--debtor--and--creditor--or
19 principal--and--agent--or--partner--or--surety--as--to--any--party;

20 {4}(1) At the time of such meeting and nominations,
21 there shall be filed with the court by each nominating party
22 or judge an affidavit of the person so nominated stating
23 substantially as follows:

24 (a) that he has formed no unqualified opinion or
25 belief as to the compensation to be awarded in the

1 proceeding or as to the fairness or unfairness of the
2 plaintiff's offer for the--lands--and--improvements--of--the
3 defendant's the estate desired;

4 (b) that he has no enmity against or bias in favor of
5 any party and has not discussed, communicated, or overheard
6 or read any discussion or communication from any party
7 relating to values of the lands in question or the
8 compensation offered, demanded, or to be awarded;

9 (c) that if selected as a condemnation commissioner,
10 he is willing to serve and will well and truly try the
11 issues of compensation and render a true decision according
12 to the evidence and in compliance with the instructions of
13 the court;

14 (d) that he will not discuss the case with anyone
15 except the other commissioners until a decision has been
16 filed with the court."

17 Section 12. Section 70-30-301, MCA, is amended to
18 read:

19 "70-30-301. Hearing -- judge to preside --
20 determinations by--commissioners. (1) Immediately upon
21 nomination and appointment of commissioners under 70-30-207,
22 the same shall proceed to meet at the time and place stated
23 in the order appointing them, which time shall not be more
24 than 10 days after the order of appointing, and proceed to
25 examine the lands in which an estate is sought to be

appropriated. At a time appointed by the judge and within said 10-day period they shall hear the allegations and evidence of all persons interested in each of the several parcels of land.

(2) Such hearing shall be attended by and presided over by the presiding judge who shall make all necessary rulings upon procedure and the admissibility of evidence.

~~(3) The trier of fact shall determine:~~

~~(a) whether an estate in the property must necessarily be taken for a public use;~~

~~(b) the minimum estate to be taken;~~

~~(c) whether the condemnor will be required to take an uneconomic remnant as defined in 70-30-101;~~

~~(d) whether the parties have acted in good faith; and~~

~~(e) whether the condemnor has made a good faith effort to purchase an estate in the property.~~

(3)(4) At the conclusion of the aforesaid hearing, the court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, solely upon the basis of said examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court, the following:

(a) the current fair market value at its highest and best use of the property--sought--to--be--appropriated--and

~~estate granted the condemnor by the judge, including all improvements thereon pertaining to the realty and--of--each and--every--separate--estate--and--interest--therein. If it consists of different parcels are involved, the current-fair market value of the estate granted in each parcel and--each estate-or-interest--therein must be separately assessed.~~

(b) if the property in which an estate is sought to be appropriated constitutes only a part of a larger parcel, the depreciation in current fair market value at its highest and best use which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvements in the manner proposed by the plaintiff;

(c) separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvements proposed by the plaintiff; and if the benefit shall be equal to the amount assessed under subsection (3)(4)(b), the owner of the parcel shall be allowed no compensation except the value of the ~~portion estate~~ taken; but if the benefits shall be less than the amount assessed under subsection (3)(4)(b), the former shall be deducted from the latter, and the remainder shall be the only amount allowed in addition to the current fair market value;

(d) if--the--property--sought-to-be-condemned-be-for-a

~~railroad, the cost of good and sufficient fences along the line of such railroad and the cost of cattle guards where fences may cross the line of such railroad the current fair market value at its highest and best use of any uneconomic remnant the court requires the condemnor to take.~~

~~(4)(5)~~ Where there are two or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have the amount of the award for said the estate granted in the property first determined, as hereinbefore stated, as between plaintiff and all defendants claiming any interests therein. Thereafter in the same proceeding the respective rights of each of such defendants in and to the award shall be determined by the commissioners, under supervision and instruction of the court, and the award apportioned accordingly.

~~(6) Following the trier of fact's determinations under subsection (3) and prior to the commissioners' determinations under subsections (4) and (5), the court may enter an order allowing the condemnor to take possession of the estate granted by the court.~~

~~(7) Costs must be assessed in favor of a condemnee and against a condemnor who either terminates an action prior to entry of a final condemnation order or is ordered to pay a greater amount for the estate granted than was offered by the condemnor pursuant to [section 5]."~~

Section 13. Section 70-30-302, MCA, is amended to read:

"70-30-302. Assessing compensation -- date and measure -- interest. (1) For the purpose of assessing compensation, the right thereto shall be deemed to have accrued at the date of the service of the summons, and its current fair market value for its highest and best use as of that date shall be the measure of compensation for ~~all~~ property ~~any~~ ~~estate~~ to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected. This shall not be construed to limit the amount of compensation payable by the department of highways under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

(2) If an order be made letting the plaintiff into possession, ~~as provided in 70-30-311~~, the full amount finally awarded shall draw interest at the rate of 10% per annum from the date of the service of the summons to the earlier of the following dates:

(a) the date on which the right to appeal to the Montana supreme court expires or, if appeal is filed, to the date of final decision by the supreme court; or

(b) the date on which the property owner withdraws from court the full amount finally awarded.

(3) If the property owner withdraws from court a

1 fraction of the amount finally awarded, interest on such
2 fraction shall cease on the date it is withdrawn but
3 interest on the remainder of the amount finally awarded
4 shall continue to the earlier of the aforesaid dates defined
5 in (2)(a) and (2)(b) of this section until the full amount
6 is withdrawn from the court.

7 (4) None of the amount finally awarded shall draw
8 interest after the date on which the right to appeal to the
9 Montana supreme court expires.

10 (5) No improvements put upon the property subsequent
11 to the date of the service of summons shall be included in
12 the assessment of compensation or depreciation in current
13 fair market value, nor shall the same be used as the basis
14 of computing such compensation or depreciation."

15 Section 14. Section 70-30-304, MCA, is amended to
16 read:

17 "70-30-304. Appeal to district court from assessment
18 of commissioners. (1) An appeal from any assessment made by
19 the commissioners may be taken and prosecuted in the court
20 where the report of said commissioners is filed by any party
21 interested. Such appeal must be taken within the period of
22 30 days after the service upon appellant of the notice of
23 the filing of the award by the service of notice of such
24 appeal upon the opposing party or his attorney in such
25 proceedings and the filing of the same in the district court

1 wherein the action is pending, and the same shall be brought
2 on for trial upon the same notice and in the same manner as
3 other civil actions, and unless a jury shall be waived by
4 the consent of all parties to such appeal, the same shall be
5 tried by jury, and the amount to which appellant may be
6 entitled, by reason of the appropriation of an estate in his
7 property, shall be reassessed upon the same principle as
8 hereinbefore prescribed for the assessment of such amount by
9 commissioners.

10 (2) Upon any verdict or assessment by commissioners
11 becoming final, judgment shall be entered declaring that
12 upon payment of such verdict or assessment, together with
13 the interests and costs allowed by law, if any, the right to
14 construct and maintain ~~the highway, railroad, or other any~~
15 public work or improvement and to ~~take, use, and appropriate~~
16 ~~the estate in the~~ property described in such verdict or
17 assessment for the use and purposes for which said land has
18 been condemned shall, as against the parties interested in
19 such verdict or assessment, be and remain in the plaintiff
20 and his or its heirs, successors, or assigns ~~forever to the~~
21 ~~extent and for the time stated in the judge's determination~~
22 ~~of the estate granted.~~

23 (3) In case the party appealing from the award of the
24 commissioners in any proceeding, as aforesaid, shall not
25 succeed in changing to his advantage the amount finally

16

awarded in such proceeding, he shall not recover the costs of such appeal, but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant; provided, that upon the trial of such appeal, the plaintiff may contest the right of any party or parties thereto to an estate in any of the property mentioned and set forth or involved in said appeal, which if the property was located after the preliminary survey of any such a highway or railroad, and the party is seeking to condemn its right-of-way under and pursuant to the provisions of this chapter, provided such condemnation proceedings are begun within 1 year after such preliminary survey."

Section 15. Section 70-30-308, MCA, is amended to read:

"70-30-308. How payment made -- execution or annulment for nonpayment. (1) Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and be distributed to those entitled thereto. However, at the option of the defendants, payments may be made:

(a) if a fee-simple interest in the defendant's land is taken, on an annual basis, utilizing the installment contract method; or

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the

defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned; or,

(c) if an easement over or through the defendant's property is involved, in either a single payment or in not more than five consecutive annual installments.

(2) If the estate granted by the court is a leasehold, the rent must be paid annually or semiannually at the option of the lessor. The judge may provide that the amount of the payments be renegotiated at intervals set by the judge. The judge may also entertain a motion by either party for modification of the payments. Such renegotiation or modification must be commenced by a complaint and answer and determined in accordance with the procedure set out in 70-30-201 through 70-30-207 and 70-30-301 through 70-30-306.

(3) If the money be not so paid or deposited, the defendants may have execution as in civil cases, and if the money cannot be made on execution, the court or judge, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant if possession has been taken by the plaintiff."

Section 16. Section 70-30-309, MCA, is amended to read:

"70-30-309. Final order of condemnation -- contents --

vesting upon filing. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court or judge must make a final order of condemnation, which must describe the ~~estate granted in the~~ property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property ~~estate~~ described therein shall vest in the plaintiff for the purposes therein specified."

Section 17. Section 70-30-310, MCA, is amended to read:

"70-30-310. New proceedings to cure defective title. If the ~~title ownership rights in the estate~~ attempted to be ~~acquired--is granted by the judge's order~~ are found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this chapter prescribed."

Section 18. Section 70-30-313, MCA, is amended to read:

"70-30-313. Current fair market value. Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

(1) the highest and best ~~reasonably-available~~ use of

the property and its value for such use, ~~provided that the current use may not be presumed to be the highest and best use;~~

(2) the machinery, equipment, and fixtures forming part of the real estate taken; and

(3) any other relevant factors as to which evidence is offered."

~~NEW SECTION.~~ Section 19. Repealer. Sections 69-13-104, 70-30-104, 70-30-204, 70-30-206, 70-30-305, 70-30-311, 70-30-321, 70-30-322, 82-2-201 through 82-2-212, 82-2-221 through 82-2-224, and 82-10-301 through 82-10-305, MCA, are repealed.

~~NEW SECTION.~~ Section 20. Codification instruction. Sections 5 and 6 are intended to be codified as an integral part of Title 70, chapter 30, part 1, and the provisions of Title 70, chapter 30, apply to sections 5 and 6.

~~NEW SECTION.~~ Section 21. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun prior to the effective date of this act.

~~NEW SECTION.~~ Section 22. Effective date. This act is effective on passage and approval.

-End-

STATUS SHEET

HOUSE NATURAL RESOURCES COMMITTEE

Page 6

___ Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 770	Exempts certain condominiums from the Mont. Subdivision and Platting Act; includes all condos under the Sanitation in Subdivisions Act	2/12	Hanson	2/18	AND AS AMENDED DO PASS	2/18
HB 802	Revises the laws relating to the regulation of the sale and use of pesticides	2/15	D. Brown	2/21	AND AS AMENDED DO PASS	2/21
HB 803	Requires the DNRC to adopt env. standards that applicants must meet under the MFSA; and makes mandatory the adoption of other rules under the Act	2/15	Harp	2/21	TABLED	2/21
HB 806	Abolishes the Board of Water Well Contractors; transfers regulatory authority to the DNRC	2/15	Waldron	2/18	TABLED	2/18
HB 825	Revises the eminent domain laws	2/15	Jacobson	2/18	AND AS AMENDED DO PASS	2/21
HB 842	Generally revises the hard-rock mining laws	2/15	J. Jensen	2/21	TABLED	2/21

ROLL CALL
HOUSE NATURAL RESOURCES

COMMITTEE

48 LEGISLATIVE SESSION, 1983

	Date														
	6:30	12 P.m	5:45 P.m	10 P.m											
Name	2/14	2/16	2/16	2/18	2/21	2/21	2/21	3/2	3/4	3/7	3/9	3/11	3/14	3/16	
CHAIRMAN HAL HARPER	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
V.CHM. BOB REAM	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
KELLY ADDY	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
TOM ASAY	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	EX	✓	✓	
TONI BERGENE	✓	✓	✓	✓	EX	✓	✓	✓	✓	✓	✓	✓	✓	EX	
VERN BERTELSEN	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	EX	✓	✓	
DAVID BROWN	EX	✓	✓	✓	✓	✓	✓	✓	✓	✓	EX	✓	EX	EX	
AUBYN CURTISS	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
HARRISON FAGG	ab	✓	✓	✓	✓	✓	✓	✓	EX	✓	✓	ab	✓	EX	
BILL HAND	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	EX	
DENNIS IVERSON	EX	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	EX	
JAMES JENSEN	✓	✓	✓	✓	✓	✓	✓	✓	✓	EX	✓	✓	✓	✓	
KATHLEEN McBRIDE	✓	✓	ab	✓	✓	✓	✓	✓	EX	✓	✓	✓	✓	EX	
JERRY METCALF	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
GLENN MUELLER	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
TED NEUMAN	✓	✓	✓	EX	✓	✓	✓	✓	✓	✓	✓	ab	✓	✓	
KEN NORDTVEDT	ab	ab	✓	EX	✓	✓	ab	ab	✓	ab	ab	EX	✓	✓	
JOE QUILICI	ab	✓	✓	✓	✓	EX	✓	✓	EX	EX	EX	EX	EX	EX	
DENNIS VELEBER	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	EX	✓	✓	

HOUSE NATURAL RESOURCES COMMITTEE MINUTES
February 18, 1983

The House Natural Resources Committee convened at 12 p.m., February 18, 1983, in Room 224K of the State Capitol, with Chairman Harper presiding and all members present except Reps. Neuman and Quilici, who were excused. Chairman Harper opened the meeting to a hearing on SJR 8.

SENATE JOINT RESOLUTION 8

REPRESENTATIVE GLENN MUELLER, District 21, introduced the bill for Senator Severson as he is also a member of the Western States Legislative Forestry Task Force. He said this is a bill to send delegates to this task force. He said we have been doing this for a number of years. He said it has been indicated to him that the forest service listens to the concerns of the involved people as relayed by the delegates.

ROBERT HELDING, Montana Wood Products Association, said he is one of the industry liaison people on the committee. He said they meet approximately four times a year and it is one of the best committees he has been associated with.

Since there were no other proponents and no opponents, Rep. Mueller closed by thanking the committee for their time.

Chairman Harper closed the hearing on this bill and opened the hearing on HB 825.

HOUSE BILL 825

REPRESENTATIVE GLENN JACOBSEN, District 1, chief sponsor, handed to the members a series of amendments (copy is Exhibit 1). He said this bill is to generally revise the eminent domain laws. He recommended the bill be put in a subcommittee to work with the various groups and come up with a law that we can live with.

TONI KELLEY, Northern Plains Resource Council, spoke in support and a copy of her testimony is Exhibit 2 of the minutes.

TERRY MURPHY, Montana Farmer's Union, said the suggestion for a subcommittee is a good one as the bill needs considerable cleanup. He said "highest and best use" and "good faith effort" are both difficult phrases to define. On page 8, line 21, he questioned the open notice before going to court as it might restrict someone's access to the courts. He said the bill does have some good points one of which is to redefine public needs.

JEANNE CHARTER, Shepherd, Charter Ranch Inc., said they have had experience with the condemnation proceedings as they have been awaiting a settlement for eight years. She said going to court is the only way to get a fair settlement, but they were one of the very few on the Colstrip line that did go to court.

She said most landowners are in a no-win situation and opt to take what is offered. She said the present law invites abuses as any Tom, Dick or Harry can use this law for anything they dream up that is not an agricultural use. She said under the present law the landowner has the burden of proving by a preponderance of the evidence and why should this be when they are the contented ones to leave things as they are.

WILLIE DAY, Farmers Union, said he is a reluctant supporter of the bill as he said it is a poorly worded bill. He said he supports putting it into a subcommittee. He said a definition is needed for the highest and best use and the good faith effort. He said something overlooked is repealing some of the left-out sections. He said the bill does not protect the irrigation projects. He questioned why on page 12 county commissioners are used for a town that is incorporated. He questioned the time limits of having to answer within 15 days on a survey that may have been done without his knowledge, and 5 days from then may be required to be in court.

JO BRUNNER, WIFE, said she appreciated the remarks of Terry Murphy.

PATRICK R. UNDERWOOD, Montana Farm Bureau Federation, spoke in support and a copy of his testimony is Exhibit 3.

FRANCES CLINCH, Montana Senior Citizens, spoke in support and a copy of his testimony is Exhibit 4.

RICHARD BERG, Martinsdale, representing self, spoke in support. He said help is needed as the corridors can go any way any time. He said his family has been on the land for 100 years. He felt he should at least have the right to say where the route goes. He said 825 is a step in the right direction and he hoped something could be done.

LYLE JONES, rancher outside of Big Timber, said they have two power and one oil transmission line going through their place. He said they are in favor of the bill - needs some work but he felt it could be a good bill.

PAT SMITH, representing himself and NPRC, said these laws are long overdue for a major revision. He said the bill narrows the definition of public use. He said it also gives landowners a better beginning position - not an equal one but better than under existing law. He said the effect of this will be to avoid litigation by encouraging settlements. He said under present law it is often a quick take scenario - there is a quick complaint summons and the landowner must respond as to why the land should

not be condemned and set a reasonable value. He said this is often done unreasonably in advance of the filing. Also, within 90 days of the actual notice to the landowner he has to make a reasonable good faith effort to purchase the property. This bill allows for annual payments on leases and easements which is a benefit to the landowner. He also said the bill must be consistent with public uses that are recognized in the Montana constitution.

BILL GILLEN, Forsyth, NPRC, spoke in support. He said the revisions are long overdue and we are far behind all the other states. He said most of our law was passed 100 years ago when the miners needed to get water to their claims and time was of the essence. He said this is not true anymore. He mentioned a Colstrip project that came before the Board of DNRC in 1976 and 14 months later went to court to condemn the land but was not built until 1981-82. He said the annual lease will not be anything new as it is being used by the federal and some state governments now. He said the bill will make the law better in that they will know where the lines will go. He said it has taken years to file on water rights but a man has only 15 days to respond to a claim on his land and can be in court in 20 days to protect it.

BILL BROOKE, Montana Stockgrowers, said he agreed with Terry Murphy's testimony. He said he had problems with the bill and was willing to work with the subcommittee.

REPRESENTATIVE BOB REAM, District 85, said he was a co-sponsor of the bill and would like to voice his support. He said the federal government has a uniform eminent domain code if anyone wished to see it. He said he represents a district which includes many ranchers and there are five power lines crossing the district. He said his people are upset about the eminent domain laws.

REPRESENTATIVE TOM ASAY, District 50, said he would like to go on record as supporting the bill.

OPPONENTS

JIM BECK, Department of Highways, said the bill is a mess. Its purpose is to change the regular procedure whereby property is condemned. You have a very short frame to work out a very complex problem and he felt it would be a waste of everybody's time. He said he had always supported the full scale legislature in their review of the laws, but he said the uniform eminent domain laws took years and how can we expect to do this and address all the problems in two to three days. He didn't think the expertise was in this building or in Helena. He said he was willing to work with the subcommittee and help them see some of the problems. He said there are many inconsistencies in the bill that are unconstitutional.

23

WARD SHANAHAN, Northern Tier Pipeline Company, said they had filed an application with the PSC in 1976 as a common carrier of crude oil. He said there is a serious legal question as to whether we are covered by this bill. He said they have spent 55 million dollars in getting the necessary permits, etc., through the states affected. He said Cenex Refinery in Billings is quite interested in their bringing this crude oil into Montana. He said they have approval for the general route of their line. He said they will be taking easements on the land they pass through so in a number of years the farmer will get his land back. He was afraid this bill just could stop their company in their tracks.

TOM DOWLING, Montana Railroad Association, spoke in opposition.

MIKE FITZGERALD, President, Montana Trade Commission, spoke in opposition and a copy of his testimony is Exhibit 5.

TOM EBZERY, Billings, Tongue River Railroad, spoke in opposition. He said they have spent several million dollars on feasibility studies to develop an application and their Draft EIS is coming out soon. He said they have identified 42 or 43 landowners that will be affected. He said they will use eminent domain only as a last resort because if just one landowner says no the whole project would be jeopardized. He said a railroad is different from a power line as it is almost impossible to go around a landowner. He said the idea of collecting less than fee interest in the property could cause them financing problems. He asked in regard to returning the land to its original owner, what if the landowner had sold and doesn't live near the property. He said the bill as a whole needs a lot of study. He said he'd be happy to work with any subcommittee.

DON ALLEN, Montana Petroleum Association, opposed the bill and said ROBERT HELDING, Montana Woodproducts Association, had asked him to enter his name as an opponent. He said Mr. Holding opposed the bill because logging roads were eliminated from the eminent domain law. He said to pass such sweeping legislation without fully reviewing the full effects is not wise. He said he supports the idea of an interim committee to study all aspects. He felt the bill would have a negative economic impact if it became law.

BOB GANNON, Montana Power Company, said they oppose the bill not because they have been eliminated from public use, but because of the procedural changes in the bill. He said this just clouds what is already provided in the law. He felt the bill would encourage long litigation.

BONNIE TIPPY, Montana Coal Council, said this bill would eliminate some important services to our coal mines and one of these is the railroads. Coal is shipped out by railroad spurs and not by truck. With this bill you would not see any new coal mines.

She said the Legislature has been busy carving up the coal tax pie, with this bill the pie would not grow larger but would likely shrink.

REPRESENTATIVE JACOBSEN in closing said last session a resolution to study the eminent domain laws almost made it to the funding stage. He said he agreed to sponsor an eminent domain bill. He said it is unfortunate there are problems that still remain and he requested the bill be put in a subcommittee to see if some of the problems could be worked out. He said the present eminent domain laws are a detriment to agriculture but at the same time they don't want to be a detriment to economic development. He felt with the cooperation of the industries and agriculture the bill could be worked out and transmitted to the Senate where it would be worked on some more.

Questions were asked by the committee.

Chairman Harper said there really wasn't enough time to consider a bill of this magnitude. He said he would appoint a subcommittee and the time it would be meeting would be posted so all would have a chance to have input into the bill. Chairman Harper closed the hearing on this bill and opened the hearing on HB 762.

HOUSE BILL 762

REPRESENTATIVE EARL LORY, District 99, chief sponsor, said this is an old friend using a different name. It was HB 79 in 1979, HB 715 in 1981 and now its HB 762. He said each time it was amended and approved by the House. He said in 1977 was the main change as it was the revision of the entire subdivision law. That set up review for all parcels under 10 acres. Most sales were of 10 acre or greater plots. Then the Legislature raised it to 20 acres and then all divisions went to that amount. Then they would use the occasional sale and the family split. He said 83 percent of the subdivisions have never been subject to a review. Rep. Lory went through the bill pointing out the changes. He said the bill closes the loopholes so there will be no 20 acre splits, family splits and occasional sales. A family split can only be made to one and from then on it would be reviewed and would need to be held by one individual for three years. The occasional sale can only be done once each 12 months and if further subdivided it must be reviewed. Rep. Lory said this bill has been refined through three legislative sessions and is a good bill.

MEMORANDUM

TO: HOUSE NATURAL RESOURCES COMMITTEE MEMBERS

FROM: JOHN CARTER

RE: BILL SUMMARIES ON HBs 762, 770, 825 and SJR 8

HB 762
LORY

This bill seeks to generally revise the Subdivision and Platting Act and other land-use statutes. Among other things, the bill would:

- prescribe certain elements that a city or county master plan must contain;
- redefine the term "subdivision";
- revise the existing exemption provisions for certain types of land divisions;
- require the governing body responsible for reviewing a preliminary plat to do so within 60 days - if not, the subdivision is automatically approved;
- revise the provision for summary review of minor subdivisions;
- create a requirement that the cumulative impact resulting from several minor subdivisions be assessed under the review provisions for major subdivisions.

HB 770

S.J. HANSEN

This bill seeks to expand on exemption from coverage of the Subdivision and Platting Act that now exists for certain types of condominiums. The bill would also eliminate an existing exemption for condominiums under the Sanitation in Subdivisions Act.

HB 806
WALDRON

This bill seeks to abolish the Board of Water Well Contractors, transferring its authority to DNRC

HB 825
JACOBSON

This bill seeks to generally and substantially revise Montana's eminent domain laws.

SJR 8
SEVERSEN

This resolution seeks to direct the Committee on Committees to appoint two representatives and two senators to represent Montana on the Western State Legislative Forestry Task Force.

1. Page 2, line 19, following "chapter" STRIKE the period and INSERT a comma and the following: "except as provided in Article IX, Section 3 of the Montana Constitution".
2. Page 3, line 2, following the period INSERT: "'Minimum Estate' means the least property interest in or to land or other real property necessary in order to effectuate the public use to which condemnation is sought, including but not by way of limitation, leaseholds, easements, licences, and fee simple."
3. Page 7, line 7, following the word "lands" STRIKE the period and INSERT a semicolon and the following: "(4) the uses allowed under Article IX, Section 3 of the Montana Constitution."
4. Page 10, line 1, following the word "by" STRIKE the word "law" and INSERT "this chapter".
5. Page 13, line 7, following the period INSERT: "'Good faith effort' means the condemnor does the following:
 - (a) offers by actual notice to the condemnee the fair market value of the minimum estate sought to be condemned;
 - (b) waits 90 days after making such offer before filing a complaint as provided in this chapter; and
 - (c) refrains from coercive action to compel a sale, a particular sales price, or any condition or clause of a sale agreement."
6. Page 14, line 1, following section 10 INSERT A NEW SECTION:
"70-30-207 Preliminary Condemnation Order — Trial by Jury — Appeal. (1) The court shall not issue any orders granting the condemnor any rights of possession prior to the entry of a preliminary condemnation order, excepting, however the right of the condemnor as set forth in 70-30-110.
 - (2) Before a preliminary condemnation order may be entered and an estate may be taken, the condemnor must establish by a preponderance of evidence:
 - (a) that the use to which it is to be applied is a public use authorized by this chapter;
 - (b) that the taking is necessary to such use;
 - (c) that the condemnor is authorized to exercise the right of eminent domain by this chapter;
 - (d) that the estate condemned is the minimum estate;
 - (e) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use;
 - (f) that a good faith effort to purchase the minimum estate required at a valuation equal to the highest and best use has been made and failed; and
 - (g) that the condemnor will, or will not, be required to acquire on uneconomic remnant.
 - (3) The court may enter a preliminary condemnation order only after all the determinations required herein have been made.
 - (4) Either party may demand and be entitled to a trial by jury on any disputed factual issue.
 - (5) Any party may appeal the preliminary condemnation order to the Montana Supreme Court as in other cases.

RENUMBER SUBSEQUENT SECTIONS

7. Page 14, lines 4, STRIKE the words "filing of the last answer" and INSERT "entry of the preliminary condemnation order".

8. Page 17, lines 8 through 16, STRIKE IN THEIR ENTIRETY, AND RENUMBER SUBSEQUENT PARAGRAPHS. Note change needed on page 18, line 19 and 22.

9. Page 19, lines 16 through 20, STRIKE IN THEIR ENTIRETY and INSERT: "Following the entry of the preliminary condemnation order pursuant to Section 70-30-207, the court may enter an order allowing the condemnor to take possession of the estate granted by the court."

10. Page 19, line 21, following "(7)" STRIKE the word "Costs" and INSERT "Litigation Expenses".

11. Page 20, line 6, following "The", STRIKE the words "service of the summons" and INSERT "entry of the preliminary condemnation order".

12. Page 20, line 18, following "The" STRIKE the words "service of the summons" and INSERT "entry of the preliminary condemnation order".

13. Page 22, line 21, following "The" STRIKE the words "judge's determination of the estate granted" and INSERT "preliminary condemnation order".

14. Page 24, line 9, STRIKE the word "judge" and INSERT "court".

15. Page 24, line 10, STRIKE the word "judge" and INSERT "court".

16. Page 24, line 11, STRIKE the word "judge" and INSERT "court".

17. Page 25, line 15, STRIKE the word "judge's" and INSERT "court's".

18. Page 1 line 11 Strike "and 82-10-301 through"
19. Page 1 line 12 Strike "82-10-305"
20. Page 12 line 11 through page 13 line 4 should not be eliminated.
21. Page 6 line 18-19 should not be eliminated.

6711

TESTIMONY OF TONI KELLEY, CHAIRPERSON OF THE NORTHERN PLAINS
RESOURCE COUNCIL, ON HB 325, BEFORE THE HOUSE NATURAL RESOURCES
COMMITTEE, FEBRUARY 18, 1983

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM TONI KELLEY,
CHAIRMAN OF THE NORTHERN PLAINS RESOURCE COUNCIL, AN ORGANIZATION
THAT HAS SOUGHT TO PROTECT LANDOWNER RIGHTS SINCE ITS INCEPTION
IN THE EARLY 1970'S.

I AM HERE TO TESTIFY IN SUPPORT OF HB 325, WHICH PROPOSES
REFORM OF MONTANA'S EMINENT DOMAIN LAW. EMINENT DOMAIN IS
A NECESSARY POWER FOR PUBLIC NECESSITIES, BUT AS IT STANDS NOW,
MONTANA'S LAW IS SO BROAD THAT IT IS A LEGAL LICENSE TO STEAL;
ANYONE CAN CONDEMN FOR ALMOST ANYTHING.

OTHER WESTERN STATES THAT HAVE ANTIQUATED LAWS SIMILAR TO MONTANA'S
ARE IMPROVING THEM. FEW STATES ALLOW PRIVATE CONDEMNATION AT ALL, AND
MOST HAVE NEVER ALLOWED IT.

THE POWER OF EMINENT DOMAIN MUST BE USED CAREFULLY AND
PRUDENTLY. WHILE WE FULLY UNDERSTAND THE NECESSITY OF EMINENT
DOMAIN FOR TRULY PUBLIC USES, WE FEEL LANDOWNERS NEED TO BE
TREATED FAIRLY. IT IS DISAPPOINTING AND FRUSTRATING TO BE
THREATENED WITH CONDEMNATION, JUST BECAUSE IT IS EASIER OR
CHEAPER FOR A PRIVATE COMPANY TO DO SO, RATHER THAN TO GO TO

THE REALTOR OR NEGOTIATE IN GOOD FAITH WITH LANDOWNERS.

THIS BILL IS AN EFFORT TO PROTECT PRIVATE PROPERTY RIGHTS. SINCE AGRICULTURE IS MONTANA'S NUMBER ONE BUSINESS, IT ONLY SEEMS REASONABLE TO PROTECT THIS VITAL ELEMENT OF OUR ECONOMY. AN EMINENT DOMAIN LAW THAT PROTECTS LANDOWNERS IS NOT ANTI-BUSINESS OR ANTI-GROWTH, IT IS GOOD AND FAIR PUBLIC POLICY. THANK YOU.



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MONTANA FARM BUREAU FEDERATION

502 SOUTH 19th

Dial 587-3153

BOZEMAN, MONTANA 59715

BILL NUMBER. HB 825

DATE Feb 18, 1983

SUPPORT x OPPOSE _____ AMMEND _____

NAME Patrick B. Underwood

COMMENTS:

The MFBF supports HB 825. Much of the language of this bill is taken from both the Montana Farm Bureau and the American Farm Bureau Policy books.

We do realize this is a complex bill... and it may well address some things which effect other groups which must be addressed by your committee.

The concept that will limit the use of eminent domain to those uses that are truly public, not private are the major items of interest to us.

Ex. 4

Montana Senior Citizens Assn., Inc.

WITH AFFILIATED CHAPTERS THROUGHOUT THE STATE

P.O. BOX 423 - HELENA, MONTANA 59624



18 February 1983

(406) 443-5341

Testimony of The Montana Senior Citizens Association on House Bill 825

Mr. Chairman and Members of the Committee,

For the record, my name is Francis Clinch and I represent The Montana Senior Citizens Association, for which I work. I am here to testify on behalf of our association's members in favor of House Bill 825.

A large proportion of MSCA is composed of citizens with backgrounds in agriculture. Because of their longevity, Montana's elderly have a good perspective on the workings of state law throughout the past years, especially as that law affects landowners. At our Annual Meeting in October of 1982, members voiced their concern that the Eminent Domain Law of Montana was too lax in granting and administering that right. MSCA believes that the passage of 825 would remedy this situation and create a more equitable balance in the law. I will, for the sake of brevity, mention two provisions of this legislation which most concern us.

The most common complaint our members voiced was the broad definition of "public usage" found in the current code. This can be seen in its repeated inclusion of "mines, mills and smelters", which assumes that these economic interests will always coincide with the usage of property of the public good. We don't believe this assumption is always correct. This legislation provides a more accurate appraisal of usages which are definitely related to all of Montana's public.

Beyond this primary concern, MSCA approves of the provisions of HB 825 which ensure that the affects of eminent domain on landowners and their land will be as minimal as possible. Close reading of the current code demonstrates that too much leeway is given in allowing properties to be condemned, a situation remedied by the wording of House Bill 825.

(over)

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The Eminent Domain Law must provide a critical balance between the necessary usage of our state's lands by all Montanans and the right of the individual landowner to the usage of his or her property. This balance has never been easy, but senior citizens, especially those with close ties to the land, recognize the needs of both sides. Our association believes that House Bill 825 provides for a better balance between the two sides. The provisions mentioned in this testimony and others too numerous to delineate will make Montana's Eminent Domain Law one which will more justly serve all the citizens of the state.

TESTIMONY

IN OPPOSITION TO HB 825

FROM
MIKE FITZGERALD
PRESIDENT
MONTANA TRADE COMMISSION
SUITE 612 - POWER BUILDING
HELENA, MONTANA

Before the House Natural Resources Committee
February 18, 1983
Helena, Montana

Whether it is intended to or not HB 825, which would overhaul Montana's Eminent Domain law, would immeasurably confound further energy, mineral and timber development in Montana.

In addressing the issues of HB 825, the basic question I believe we need to ask is, "Is further resource development in Montana in the public interest?"

If it is, then I believe HB 825 should not pass. Today in Montana there are over 40,000 Montanans unemployed. Since January, 1980 we have permanently lost over 5,000 primary jobs in Montana which is almost 5% of our primary job base of 110,000 - lost in just two years time. The State Department of Labor announced in November that unemployment checks had become the largest payroll in Montana. They also estimate that 50,000 people may be unemployed in Montana by Spring. The SBA estimates that Montana business bankruptcies are averaging 15 per month, up from an average of 3 per month two years ago. This does not include individual bankruptcies and agricultural foreclosures which have also escalated. Two primary industries in Montana, copper and timber may be in permanent decline. The energy boom predicted in the 70s has never materialized. Coal production has leveled off at less than 35 MM/tons/yr. The energy boom never materialized in Montana and is not likely to, at least, not anywhere close to 1970's predictions. Coal development may be 100 MM/tons/yr. by the year 2000, that's adjusted down from mid 70s projections of 270 MM/tons/yr. by the year 2000. Industrial applications for water have disappeared.

According to the July, 1982 Montana Poll, sponsored by the Great Falls Tribune and the Bureau of Business and Economic

Research, 90% of the Montanans interviewed said they supported economic growth.

In order to provide employment to maintain .6 percent growth and reduce unemployment to 5% we must create, at a minimum, 23,000 new primary jobs in Montana by the year 2000. Many of these new primary jobs will have to be in processing and manufacturing, likely from our resource base. Right now the average new manufacturing job in the United States requires a \$40,000 investment. So you can see we have a substantial job before us in Montana just to maintain a modest growth rate to provide jobs for Montanans.

According to the Bureau of Businesses and Economic Research, "...Our best hope in the 1980's is the mining industry: energy (coal, oil and gas), metallic and non-metallic mining... Average annual earnings in mining are higher than in other industry, and increased mineral production usually means more processing or manufacturing activity as well as a demand for more railroad and other transportation services. The jobs in manufacturing and transportation also are high paying jobs. If Montana is to reverse recent losses and maintain or increase the level of economic welfare of its' citizens, then we must rely on natural resource development."

In my judgement HB 825 would seriously jeopardize further resource development in Montana. If you believe that the present Eminent Domain law needs revising, then I respectfully recommend that you table HB 825 and appoint an interim study committee that can comprehensively review the present law and analyze the economic impacts on Montana's economy.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES

COMMITTEE

BILL HB 825

DATE 2/18

SPONSOR JACOBSON

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Tom Kelly	Neen Twp	NPRC	✓	
John Kelly	Big Timber	BVA	✓	
Tom Beck	Hoopa	Thompson	✓	✓
Richard BERG	Martinsdale	MYSELF	✓	
Paul Hamble	Melville	myself	✓	
Joanne Charter	Shepherd	Charter Ranch Inc	✓	
George Pich	Glenview	Rancher/Foreman	✓	
John Pich	Helena	W. I. E.		
Chris Murphy	St. Falls	MT Farmer/Vision		
PAT Smith	Billings	Myself / NPRC	✓	
Tom Dowling	Int. RR Am	Helena		X
Mary A Langley	Mont. Mining Assn.	Helena		X
W. Mac Roberts	Independent Landman	Helena		X
Dennis SHER	Alco/Amoco	Helena		X
Don Allen	MT Petroleum Assn.	Helena		✓
John Pich	Shell Oil Company	Billings		✓
John Pich	Helena	MT Trade Com		✓
Bob McPherson	Messault	West Wood Products		✓
KEITH OLSON	KALISPELL	MT. LOGGING ASSN.		✓
Wm. Cuddy	Thompson Falls	Cuddy Logging Inc.		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

TOM EBZERY

BILLINGS

TONGUE RIV. R/L

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Bill Gillen Forsyth

NPRC

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HOUSE *Natural Resources* COMMITTEE

DATE 2/18

[illegible]

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

February 21,

19 83

MR. **SPEAKER:**

NATURAL RESOURCES

We, your committee on

HOUSE

Bill No. **825**

having had under consideration

First reading copy (white)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE EMINENT
DOMAIN LAWS; AMENDING SECTIONS 70-30-101, 70-30-102, 70-30-110,
70-30-111, 70-30-201, THROUGH 70-30-203, 70-30-205, 70-30-207, 70-30-301,
70-30-302, 70-30-304, 70-30-308 THROUGH 70-30-310, AND 70-30-313, MCA;
REPEALING SECTIONS 69-13-104, 70-30-104, 70-30-204, 70-30-206,
7-30-305, 70-30-311, 70-30-321, 70-30-322, 82-2-201 THROUGH 82-2-212,
82-2-221 THROUGH 82-2-224, AND 82-10-301 THROUGH 82-10-305, MCA;
AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

HOUSE

825

Respectfully report as follows: That

be amended as follows:

1. Title, line 5.

Following: "SECTIONS"

Strike: line 5 through "DATE" on line 12

Insert: "70-30-101, 70-30-201, 70-30-202, 70-30-203, 70-30-206, 70-30-207, 70-30-308, 70-30-309, 70-30-311, 70-30-313, MCA;
repealing sections 70-30-204 AND 70-30-205, MCA."

2. Page 1 through page 25.

Strike: all of the bill following the Title

Insert: "BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-30-104, MCA, is amended to read:

"70-30-104. What estates and rights in land may be taken. The following is a classification of the estates and rights in land subject to be taken for the public use:

(1) such estate or rights as may be necessary up to and including a fee simple when taken for public buildings or grounds or for

DO PASS

Chairman.

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permanent buildings or for an outlet for a flow or a place for the deposit of debris or tailings of a mine or for the mining and extracting of ores, metals, or minerals when the same are owned by the plaintiff but located beneath or upon the surface of property where the title to said surface vests in others or for the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the appropriation is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of 1 year of the use for which the same was appropriated, and thereupon the ownership of the residue of natural gas therein remaining shall likewise vest in the then owners of such reservoir space.

(2) such estate or rights in the surface as are necessary for a reservoir or dam and for the permanent flooding that results, up to the edge of the maximum pool of the reservoir;

(3) an easement, leasehold, or license, for so long as the interest is necessary for the purpose described in the complaint, or fee simple when taken for any other use;

(4) the right of entry upon and occupation of land and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use."

Section 2. Section 70-30-111, MCA, is amended to read:

"70-30-111. Facts necessary to be found before condemnation. Before property can be taken, it must appear:

(1) that the use to which it is to be applied is a use authorized by law;

(2) that the taking is necessary to such use;

(3) if already appropriated to some public use, that the public use to which it is to be applied is a pure necessary public use;

(4) that a reasonable effort to purchase the property was sought and a written offer was made and rejected; and

(5) that the public interest requires the taking."

Section 3. Section 70-30-201, MCA, is amended to read:

"70-30-201. Applicable rules of practice. Except as otherwise provided in this chapter, the provisions of title titles 25 and 26, including

the Montana Rules of Civil Procedure and the Montana Rules of Evidence are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter."

Section 4. Section 70-30-202, MCA, is amended to read:

"70-30-202. Jurisdiction and venue -- complaint and summons required. All proceedings under this chapter must be brought in the

February 21, 1983

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district court of the county in which the property or some part thereof is situated. They must be commenced by filing a complaint and issuing a summons thereon. A summons served under this chapter must contain a notice to the defendant to file and serve an answer to the issue of public necessity and to appear and show cause at a time and place specified therein why the property described should not be condemned as prayed for in the complaint.

Section 5. Section 70-30-203, MCA, is amended to read:

*70-30-203. Contents of complaint. The complaint must contain allege:

(1) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(2) the names of all owners, mortgagees, and lienholders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants;

(3) a statement of the right of plaintiff;

(4) statements of each of the facts necessary to be found in 70-30-111;

~~(4)~~ (5) if a right-of-way is sought, the complaint must show the location, general route, and termini and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding;

~~(5)~~ (6) a description of each piece-of-land interest in real property sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. ~~When application for the condemnation of a right-of-way for the purposes of sewerage is made on behalf of a settlement or a town or a county, the county commissioners of the county may be named as plaintiff.~~

~~(6)~~ (7) if a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be

Chairman.

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appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 82-10-304."

Section 6. Section 70-30-206, MCA, is amended to read:

"70-30-206. Powers of court -- preliminary condemnation order. (1) The court or judge has power to:

(a) regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e) and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States; or

(b) ~~determine whether or not the use for which the property is sought to be appropriated is a public use within the meaning of the laws of this state~~ limit the interest in real property sought to be appropriated if in the opinion of the court the interest sought is not necessary;

~~(c) limit the amount of property sought to be appropriated if in the opinion of the court or judge the quantity sought to be appropriated is not necessary.~~

(2) If the court or judge is satisfied from the evidence presented ~~at the hearing provided for in 70-30-204~~ that the public interests requires the taking of such lands interest in real property and that the facts necessary to be found before condemnation appear, it or he must forthwith make and enter a preliminary condemnation order that the condemnation of the ~~land or other~~ interest in real property may proceed in accordance with the provisions of this chapter.

(3) If the property sought to be appropriated is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court or judge shall direct the commissioners to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the underground gas storage reservoir and for the use in connection with the creation, operation, and maintenance thereof and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property. However, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas. The court shall appoint three persons, qualified as experts and recommended as such by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated, and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff."

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Section 7. Section 70-30-207, MCA, is amended to read:

"70-30-207. Appointment of commissioners -- qualifications -- affidavit. (1) ~~Immediately upon making and entering the preliminary condemnation order, the judge must meet with the respective parties or their attorneys of record for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property. The appointment of~~ Within 10 days of entry of a preliminary condemnation order, the defendant shall file a statement of his claim of just compensation. If within 20 days of service of defendant's claim plaintiff fails to accept the claim, the court

must appoint condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners.

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

- (a) a citizen of the United States and over 18 years of age;
- (b) that he is not more than 76 years of age;
- (c) that he is in possession of natural faculties, of ordinary intelligence, and not decrepit;
- (d) that he is possessed of sufficient knowledge of the English language;

(e) that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending;

(f) that he has not been convicted of malfeasance in office or any felony or other high crime;

(g) that he is not related within the sixth degree to any party;

(h) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

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(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

Section 8. Section 70-30-308, MCA, is amended to read:

"70-30-308. How payment made — execution or annulment for nonpayment. (1) Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and be distributed to those entitled thereto. However, at the option of the defendants, payments may be made:

(a) ~~if a fee simple interest in the defendant's land is taken, on an annual basis, utilizing the installment contract method; or~~

(b) ~~if other land is reasonably available and the plaintiff consents, by means of a land exchange between the defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned; or~~

(c) ~~if an easement over or through the defendants' property is involved, in either a single payment or in not more than five consecutive annual installments.~~

(2) If the money be not so paid or deposited, the defendants may have execution as in civil cases, and if the money cannot be made on execution, the court or judge, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant if possession has been taken by the plaintiff."

Section 9. Section 70-30-309, MCA, is amended to read:

"70-30-309. Final order of condemnation — contents — vesting upon filing. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court or judge must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified."

Section 10. Section 70-30-311, MCA, is amended to read:

"70-30-311. Putting plaintiff in possession. (1) At any time after the filing of the preliminary condemnation order or after the report and

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assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court or any judge thereof at chambers upon application of the plaintiff shall have power to make an order that, upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his answer under 70-30-207 or the amount assessed either by the commissioners or by the jury, as the case may be, the plaintiff be authorized:

(a) if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or

(b) if not in possession, to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation and that all actions and proceedings against the plaintiff on account thereof be stayed until such time.

(2) However, where an appeal is taken by such defendant, the court or judge may, in its or his discretion, require the plaintiff before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking with sufficient sureties to be approved by the judge court and to be in such sum as the court or judge may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

(3) The amount assessed by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment but may appeal in the same manner and with the same effect as if no money had been deposited or security given. In all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money so deposited and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment but may, notwithstanding, take and prosecute his appeal from such assessment; provided that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received all or any part of the amount deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed,

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with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action; and provided, further, that upon any appeal from assessment by the commissioners to a jury, the jury may find a less as well as an equal or greater amount than that assessed by the commissioners; and provided, further, that the court shall not order the delivery to any defendant of more than 75% of the money deposited on his account except upon posting of bond by such defendant equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the plaintiff such amounts withdrawn as are in excess of his final award in the proceedings.

Section 11. Section 70-30-313, MCA, is amended to read:

"70-30-313. Current fair market value. Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

(1) the highest and best reasonably available use of the property ~~and its value for such use and its value for such use, provided current use may not be presumed to be the highest and best use;~~

(2) the machinery, equipment, and fixtures forming part of the real estate taken; and

(3) any other relevant factors as to which evidence is offered."

Section 12. Repealer. Sections 70-30-204 and 70-30-205, MCA, are repealed.

Section 13. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun prior to the effective date of this act.

AND AS AMENDED

DO PASS

HOUSE NATURAL RESOURCES COMMITTEE MINUTES
February 21, 1983 - 5:50 p.m.

The House Natural Resources Committee convened at 5:50 p.m. on February 21, 1983, in Room 224K of the State Capitol with Chairman Harper presiding and all members present except Rep. Quilici, who was excused. Chairman Harper opened the meeting to executive session.

EXECUTIVE SESSION

HOUSE BILL 825 Rep. Ream gave the subcommittee report on this bill. Exhibit 1 is the list of people attending and participating in the subcommittee meeting on February 20, 1983. Exhibit 2 is a list of the suggested amendments that came from this meeting. Rep. Ream said they had a good working session and good representation from interested groups. He said the changes are mostly clean-up wording.

Rep. Hand moved the amendments be adopted. This motion carried unanimously with those present (absent at the moment were Reps. McBride, Quilici and Nordtvedt).

Rep. Brown moved the bill AS AMENDED DO PASS. This motion carried unanimously with those present (absent were Reps. Quilici and Nordtvedt).

HOUSE BILL 802 Rep. Brown went through his suggested amendments (Exhibit 3). He moved amendment 1 and this motion carried unanimously with those present. Rep. Brown then moved amendment 2. Keith Kelly of the Department of Agriculture^{was} asked if he had any problems with this and he responded in the negative. The motion carried unanimously with those present. Rep. Brown moved amendment 3 and this motion carried unanimously with those present. Rep. Brown moved amendment 4 and this motion carried unanimously with those present. Rep. Brown moved amendment 5 and this motion carried unanimously with those present. Rep. Brown said he had 3 more that weren't on the list. On page 10, line 5, strike "any" and insert "a." This motion carried unanimously with those present. On page 8, line 6, strike "shall" and reinsert "may." He said this was offered because of the department's concern that they would need to review every pesticide that came into the state. With this changed back to may they can select. This motion carried unanimously with those present. On page 16, lines 9 and 10, reinsert the stricken language. This motion was made and carried unanimously with those present.

Eminent Domain Subcommittee Meeting

2/20/83

Ex. 1

NAME	Agency / Organization	Phone
Beck	Defenses	2584
Bob Gannon	Montana Tower	449-7033
Tom Dowling	Mont. R.P. Assn	442-9000
Jon Allen	MT. Petroleum Assn.	442-7582
Pet Wilson	Montco	449-6927
Will Brooke	MT STOCKGROWERS	442-3420
John Lahr	MPC	449-4800
Bonnie Lippy	Mt Coal Council	442-6223
Rep. Glenn Jacobson		
Jim Mockler	MT. Coal Council	442-6223
Mary A Langley	MT. MINING ASSN.	443-7297
Jim Hughes	MOUNTAIN BELL	449-3385
Larry Huss	MOUNTAIN BELL	449-4160
Tim Stearns	NARC	443-4965
Ward Shanahan		442-8560

Subcommittee members:

Ream

Addy

Bertleson

1. Title, lines 5 through 12.

Following: "Sections"

Strike: lines 5 through 12 in their entirety

Insert: " 70-30-104, 70-30-111, 70-30-201, 70-30-202, 70-30-203, 70-30-206, 70-30-207, 70-30-308, 70-30-309, 70-30-311, 70-30-313 MCA; Repealing Sections 70-30-204 and 70-30-205; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

2. Pages 1 through 26

Strike: all of the bill following the Title

Insert:

Section 1. Section 70-30-104, MCA, is amended to read:

"70-30-104. What estates and rights in land may be taken. The following is a classification of the estates and rights in lands subject to be taken for the public use:

(1) such estate or rights as may be necessary up to and including a fee simple when taken for public buildings or grounds or for permanent buildings or for an outlet for a flow or a place for the deposit of debris or tailings of a mine or for the mining and extracting of ores, metals, or minerals when the same are owned by the plaintiff but located beneath or upon the surface of property where the title to said surface vests in others or for the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the appropriation is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of 1 year of the use for which the same was appropriated, and thereupon the ownership of the residue of natural gas therein remaining shall likewise vest in the then owners of such reservoir space.

(2) such estate or rights in the surface as are necessary for a reservoir or dam and for the permanent flooding that results, up to the edge of the maximum pool of the reservoir;

(3) an easement, leasehold, or license, for so long as the interest is necessary for the purpose described in the complaint, or fee simple when taken for any other use;

(4) the right of entry upon and occupation of land and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use."

Section 2 . Section 70-30-111, MCA, is amended to read:

"70-30-111. Facts necessary to be found before condemnation. Before property can be taken, it must appear:

(1) that the use to which it is to be applied is a use authorized by law;

(2) that the taking is necessary to such use;

(3) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use;

(4) that a reasonable effort to purchase the property was sought and awritten offer was made and rejected; and

(5) that the public interest requires the taking."

Section 3. Section 70-30-201, MCA, is amended to read:

"70-30-201. Applicable rules of practice. Except as otherwise provided in this chapter, the provisions of Titles 25 and 26, including the Montana Rules of Civil Procedure and the Montana Rules of Evidence are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter."

Section 4. Section 70-30-202, MCA, is amended to read:

"70-30-202. Jurisdiction and venue -- complaint and summons required. All proceedings under this chapter must be brought in the district court of the county in which the property or some part thereof is situated. They must be commenced by filing a complaint and issuing a summons thereon. A summons served under this Chapter must contain a notice to the defendant to file and serve an answer to the issue of public necessity and to appear and show cause at a time and place specified therein why the property described should not be condemned as preyed for in the complaint."

Section 5.

Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. The complaint must ~~contain~~ allege :

(1) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(2) the names of all owners, mortgagees, and lienholders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants;

(3) a statement of the right of plaintiff;

(4) statements of each of the facts necessary to be found in 70-30-111;

~~(4)~~ (5) if a right-of-way is sought, the complaint must show the location, general route, and termini and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding;

~~(5)~~ (6) a description of each ~~piece of land~~ interest in real property sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. ~~When application for the condemnation of a right-of-way for the purposes of sewerage is made on behalf of a settlement or a town or a county, the county commissioners of the county may be named as plaintiff.~~

~~(6)~~ (7) if a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be

appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 82-10-304."

Section 6. Section 70-30-206, MCA, is amended to read:

"70-30-206. Powers of court -- preliminary condemnation order. (1) The court or judge has power to:

(a) regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e) and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States;

~~(b) determine whether or not the use for which the property is sought to be appropriated is a public use within the meaning of the laws of this state~~ limit the interest in real property sought to be appropriated if in the opinion of the court the interest sought is not necessary;

~~(c) limit the amount of property sought to be appropriated if in the opinion of the court or judge the quantity sought to be appropriated is not necessary.~~

(2) If the court ~~or judge~~ is satisfied from the evidence presented ~~at the hearing provided for in 70-30-204~~ that the public interests requires the taking of such lands interests in real property and that the facts necessary to be found before condemnation appear, it ~~or he~~ must forthwith make, and enter a preliminary condemnation order that the condemnation of ~~the land or other~~ the land or other interest in real property may proceed in accordance with the provisions of this chapter.

(3) If the property sought to be appropriated is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court ~~or judge~~ shall direct the commissioners to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the underground gas storage reservoir and for the use in connection with the creation, operation, and maintenance thereof and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property. However, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas. The court shall appoint three persons, qualified as experts and recommended as such by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated, and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff."

Section 7. Section 70-30-207, MCA, is amended to read:

"70-30-207. ~~Appointment of~~ commissioners -- qualifications -- affidavit. (1) ~~Immediately upon making and entering the preliminary condemnation order, the judge must meet with the respective parties or their attorneys of record for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property.~~ The appointment of Within 10 days of entry of a preliminary condemnation order, the defendant shall file a statement of his claim of just compensation. If within 20 days of service of defendant's claim plaintiff fails to accept the claim, the court must appoint condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

- (a) a citizen of the United States and over 18 years of age;
- (b) that he is not more than 70 years of age;
- (c) that he is in possession of natural faculties, of ordinary intelligence, and not decrepit;
- (d) that he is possessed of sufficient knowledge of the English language;
- (e) that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending;
- (f) that he has not been convicted of malfeasance in office or any felony or other high crime;
- (g) that he is not related within the sixth degree to any party;
- (h) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation

and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

Section 8. Section 70-30-308, MCA, is amended to read:

"70-30-308. How payment made -- execution or annulment for nonpayment. (1) Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and be distributed to those entitled thereto. However, at the option of the defendants, payments may be made:

(a) ~~if a fee simple interest in the defendant's land is taken~~, on an annual basis, utilizing the installment contract method; or

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned. ~~or~~

~~(c) if an easement over or through the defendant's property is involved, in either a single payment or in not more than five consecutive annual installments.~~

(2) If the money be not so paid or deposited, the defendants may have execution as in civil cases, and if the money cannot be made on execution, the court or judge, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant if possession has been taken by the plaintiff. "

Section 9. Section 70-30-309, MCA, is amended to read:

"70-30-309. Final order of condemnation -- contents -- vesting upon filing. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court ~~or judge~~ must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified."

Section 10. Section 70-30-311, MCA, is amended to read:

"70-30-311. Putting plaintiff in possession. (1) At any time after the filing of the preliminary condemnation order or after the report and assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court ~~or any judge thereof at chambers~~ upon application of the plaintiff shall have power to make an order that, upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his answer under 70-30-207

or the amount assessed either by the commissioners or by the jury, as the case may be, the plaintiff be authorized:

(a) already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or

(b) if not in possession, to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation and that all actions and

proceedings against the plaintiff on account thereof be stayed until such time.

(2) However, where an appeal is taken by such defendant, the court ~~or judge~~ may, in its or his discretion, require the plaintiff before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking with sufficient sureties to be approved by the ~~judge~~ court and to be in such sum as the court ~~or judge~~ may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

(3) The amount assessed by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment but may appeal in the same manner and with the same effect as if no money had been deposited or security given. In all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money so deposited and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment but may, notwithstanding, take and prosecute his appeal from such assessment; provided that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received all or any part of the amount deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action; and provided, further, that upon any appeal from assessment by the commissioners to a jury, the jury may find a less as well as an equal or greater amount than that assessed by the commissioners; and provided, further, that the court shall not order the delivery to any defendant of more than 75% of the money deposited on his account except upon posting of bond by such defendant equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the plaintiff such amounts withdrawn as are in excess of his final award in the proceedings.

Section 11. Section 70-30-313, MCA, is amended to read:

"70-30-313. Current fair market value. Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

(1) the highest and best reasonably available use of the property and its value for such use and its value for such use, provided current use may not be presumed to be the highest and best use;

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(2) the machinery, equipment, and fixtures forming part of the real estate taken; and

(3) any other relevant factors as to which evidence is offered."

Section 12. Repealer. Sections 70-30-204 and 70-30-205, MCA are repealed.

Section 13. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun prior to the effective date of this act.

~~Section 14. Effective date. This act is effective on passage and approval.~~

-End-

	Date: 2/18 No: HB 806 Tabled	Date: 2/21 No: HB 825 A-Do Pass	Date: 2/21 No: HB 842 Tabled	Date: 2/21 No: HB 877 A-Do Pass	Date: 3/24 No: HB 893 A-Do Not Pass	Date: 3/24 No: HB 894 Tabled	Date: 3/18 No: HB 903 Do Pass
HARPER, CHM.	X	X	no	X	x	X	x
REAM, V. CHM.	X	X	no	X	x	X	x
ADDY	X	X	no	X	x	X	x
ASAY	X	X	X	no	X	X	ab
BERGENE	X	X	X	X	X	X	X
BERTELSEN	X	X	X	no	X	X	X
BROWN	X	X	X	no	no	ab	X
CURTISS	X	X	X	no	no	X	X
FAGG	X	X	no	X	X	X	x
HAND	no	X	X	no	no	X	no
IVERSON	X	X	X	no	no	X	X
JENSEN	X	X	no	X	X	X	X
McBRIDE	X	X	no	X	X	X	ab
METCALF	X	X	no	X	X	X	X
MUELLER	ab	X	X	no	no	X	X
NEUMAN	X	X	X	no	no	X	X
NORDTVEDT	X	ab	X	ab	ab	ab	ab
QUILICI CS-31	X	ab	X	X	ab	ab	ab
VELEBER 1-81	X	X	no	X	X	X	X

48th

LEGISLATIVE SESSION

COMMITTEE ON Senate Judiciary

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO NOT <u>DATE</u>	DO NOT PASS <u>DATE</u>	DO PASS AS AMEND. <u>DATE</u>	BE CON- CURRED IN <u>DATE</u>	BE CONC. IN AS AMENDED <u>DATE</u>	BE NOT CON- CURRED IN <u>DATE</u>
774	3-2-83	3-16-83	3-16-83				3-16-83		
789	3-2-83	3-21-83	3-21-83				3-21-83		
807	3-2-83	3-17-83	3-17-83				3-17-83		
808	3-2-83	3-15-83	TABLED						
811	3-2-83	3-21-83	3-21-83				3-21-83		
812	3-2-83	3-21-83	3-21-83					3-21-83	
825	3-2-83	3-11-83	3-12-83					3-12-83	
825	3-17-83	3-17-83	3-17-83					3-17-83	
855	3-2-83	3-19-83	3-19-83					3-19-83	
856	3-1-83	3-23-83	3-24-83					3-24-83	
857	3-1-83	3-17-83	3-17-83				3-17-83		
879	3-1-83	RE-REFERRED	TO EDUCATION						
880	3-1-83	3-23-83	3-24-83					3-24-83	

(Use Separate Sheet for Senate, House Bills, and Resolutions)

2

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
March 11, 1983

The fortieth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 11, 1983, at 10:09 a.m., Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 507: Representative Hannah opened by stating that he was supporting this bill at the request of the Justice of the Peace in Billings, Montana. Representative Hannah feels this bill is necessary because it has been many years since the fees have been raised. The increase is necessary to cover the increasing costs incurred by the court. Representative Hannah pointed out to the Committee that on page 2, line 1, the \$5 fee needed to be amended to \$10 to be consistent with the rest of the bill.

PROPOSERS: Marcel Turcotte, representing the Montana Magistrates Association, stated that he supports HB507. He stated the \$1 filing fee for writs of execution would also help defer costs. Mr. Turcotte also pointed out that due to a lack of time on the part of the Justices of the Peace, it would be helpful if Clerks of Court could witness signatures to complaints. Mr. Turcotte asked the Committee for a do pass recommendation.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Halligan inquired as to whether this bill applied to small claims courts and was told it did. Senator Turnage inquired whether there was any charge for issuing a writ of execution since most writs of execution are issued rather than filed. He was told no.

CONSIDERATION OF HOUSE BILL 429: Representative Hannah testified that firearms being fired within city limits is a big problem, especially in regards to highway signs. He also stated that the current \$25 fine is not much of a deterrent. It is his belief that a \$500 fine, plus the possibility of jail time would have a much greater effect on would-be offenders.

Representative Addy testified that the discharging of firearms may be a minor offense, but it can also constitute a real threat to society. Representative Addy feels more discretion in sentencing should be given to the judge.

Marcel Turcotte testified that this bill contained a fail-safe mechanism. People have, under Section 42-17-311, MCA, a trial de novo, which means a person sentenced in Justice Court who feels his penalty is excessive, can go to District Court for a new trial as if no previous trial ever existed. Mr. Turcotte feels that the District Courts have a large enough case load. It is

Mr. Turcotte's feeling that there needs to be a set fine.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senators Turnage and Daniels expressed concern about this being a municipal matter rather than a matter for the State Legislature. Senator Shaw raised question as to people who are plagued with rabbits and skunks and their right to protect themselves. He was reminded that the law already is in effect, this bill only raises the fine.

There being no further questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 825: Representative Addy explained that HB825 has a very wide scope. Representative Addy explained that HB825 is so complex that a subcommittee was formed. That subcommittee substantially reduced the scope of this bill. Senator Addy then went through each section of the bill for the benefit of the Committee.

PROPOSERS: Patrick L. Smith, representing Northern Plains Resource Council, submitted written testimony and amendments (see attached Exhibit "A"). He testified that it is his belief HB825 is a good bill. Mr. Smith does, however, have problems with page 5, lines 3-5 of the bill. It is Mr. Smith's belief that no party should have the right to set up a time frame in which another party must respond. He stated a landowner usually knows the land is going to be condemned but is uncertain as to how and when. He further testified that a landowner needs more than 20 or 30 days in order to have enough time to deal with the issues. Mr. Smith also expressed concern with the burden of proof. He feels the burden of proof should be on the condemnor rather than the landowner. He stated the condemnor has more expertise in these matters and, therefore, has the advantage. Mr. Smith stated that the key issue in this bill is the "quick-take" provision.

Mr. Bob Tully testified that his main concerns lie with what the citizens of Montana think. It is his feeling that a landowner's property should be taken away only when other means of acquiring the property fail. Mr. Tully stated that eminent domain should not be used as a threat against a defendant and also stated he has had personal experience of this nature. It is his belief that the burden of proof should be with the condemnor and that the "time is of the essence" theory is invalid, as the condemnor knows many years in advance about the condemnation of the land in question. He stated it should not be made difficult for a landowner to protect his rights and property. Mr. Tully urged the Committee to support HB825 with

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the amendments as proposed by Northern Plains Resource Council.

Mr. Pat Underwood, representing the Montana Farm Bureau, testified that he supports HB825 as amended.

Ms. Jo Brunner, representing Women Involved in Farm Economics, testified that she supports HB825, as amended by Northern Plains Resource Council.

Mr. Mons Teigen, representing the Montana Stock Grower's Association, the Montana Wool Grower's Association and the Association of State Grazing Districts, testified that he believes the amendments proposed by the Northern Plains Resource Council are good and will help HB825. Mr. Teigen stated that he feels this bill is a step in the right direction.

Representative Ream stated that many farms and ranches in the Missoula area have easements across them for powerpoles, railroads and highways. Mr. Ream stated that he has much concern with HB825.

Mike Zimmerman, representing The Montana Power Company, submitted written testimony (see attached Exhibit "D"). Mr. Zimmerman supports HB825 with these amendments.

Mr. Ward A. Shanahan, representing Northern Tier Pipeline, submitted written testimony and amendments (see attached Exhibit "E"). Mr. Shanahan testified that he supports the amendments of The Montana Power Company and Northern Plains Resource Council but has some concerns with the "quick-take" provisions and feels this is a troublesome provision. Mr. Shanahan related this issue to a case he recently handled in his private law practice which involved the issue of necessity. He stated this would create massive problems with Northern Tier Pipeline's efforts to secure 475 miles of property throughout Montana. Mr. Shanahan expressed concern with the use of "leaseholds or license" on page 3, line 21. Mr. Shanahan informed the Committee that the legal use of the term license is something that is revocable at will. Mr. Shanahan recommended to the Committee that these words be stricken from the bill.

Mr. Jim Beck, counsel to the Department of Highways, testified that with a true "quick-take" provision, a condemnor could get possession without going into court. He stated that in Montana you cannot do this until you prove necessity or pay just compensation.

Mr. Tom Ebzery, representing the Tongue River Railroad, submitted written testimony (see attached Exhibit "F") and testified that he supports the bill as passed by the House and also supports the amendments proposed by The Montana Power Company. Mr. Ebzery stated, however, that he opposes Amendment No. 2 of the Northern Plains Resource Council. He stated that eminent domain should be

used only when all other efforts to obtain the land have failed.

Mr. Mike Fitzgerald, representing the Montana Trade Commission, submitted written testimony (see attached Exhibit "G") and stated that he did not support the "quick-take" provision. Mr. Fitzgerald stated that the eminent domain laws are very important and advised that the Committee should proceed cautiously when changing these laws.

Representative Addy then stated that he felt "license" was the correct term to use (in reference to p. 3, line 21) in order to give the courts flexibility and to allow the condemnor to use the land in conjunction with the landowner. Mr. Addy also stated that the language on p. 5, lines 2-6, should be left as was originally intended by the subcommittee. He also stated that he had some problems with amendment No. 3 proposed by The Montana Power Company.

Mr. Patrick Smith, representing Northern Plains Resource Council, stated that in most cases the landowner is handicapped with respect to show cause procedures and Mr. Smith doesn't feel we should make things more difficult for the landowner. With respect to Mr. Shanahan's amendment regarding "license," Mr. Smith supports that amendment. With respect to The Montana Power Company's amendment, Mr. Smith believes that if you delete the word "reasonable," it will weaken the provision.

Written testimony was also submitted by Terry Murphy, representing Montana Farmer's Union, and Fred R. Brown, representing National Farmer's Organization (see attached Exhibits "H" and "I").

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

The Committee had problems with "reasonable." The main question being what constitutes "reasonable?"

Senator Turnage questioned the language used on page 4, line 11, where it states "purchase the property." Senator Turnage asked Mr. Smith if the language shouldn't be "purchase the interest in the property." Mr. Smith agreed and stated that this was simply an oversight and should be "purchase the interest in the property" in order to be consistent with the rest of the bill.

Senator Mazurek asked questions pertaining to what remedy the landowner can take if an offer is not "reasonable." Mr. Smith replied that a landowner could then take the issue to court. He stated that a reasonable offer made and accepted avoids court altogether.

There being no further questions from the Committee, the hearing was closed.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 3-11-83

NAME	PRESENT	ABSENT	EXCUSED
<u>Berg, Harry K. (D)</u>	✓		
<u>Brown, Bob (R)</u>	✓		
<u>Crippen, Bruce D. (R)</u>	✓		
<u>Daniels, M. K. (D)</u>	✓		
<u>Galt, Jack E. (R)</u>	✓		
<u>Halligan, Mike (D)</u>	✓		
<u>Hazelbaker, Frank W. (R)</u>	✓		
<u>Mazurek, Joseph P. (D)</u>	✓		
<u>Shaw, James N. (R)</u>	✓		
<u>Turnage, Jean A. (R)</u>	✓		

Each day attach to minutes.

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PATTEN & RENZ

ATTORNEYS AT LAW

LOWER LEVEL ONE,

FIRST CITIZENS BANK BUILDING

2812 1ST AVENUE NORTH

BILLINGS, MONTANA 59101

(406) 252-6782

JAMES A. PATTEN
JEFFREY T. RENZ

MEMORANDUM

OF COUNSEL
FRED N. DU

TO: Members of the Senate Judiciary Committee

FROM: Patrick L. Smith

SUBJECT: HB 825 (Eminent Domain Revisions)

SUMMARY

We have been requested by the Northern Plains Resource Council to review HB 825 and draft any necessary amendments. The attached amendments are offered to clarify and advance what appears to be the primary purpose of HB 825: to give landowners a reasonable opportunity to defend their private property from condemnation actions. The attached amendments do two things. First, they require the condemnor (plaintiff) to follow the Montana Rules of Civil Procedure to a greater extent. Second, they clarify that the plaintiff has the burden of proof, not the landowner (defendant). In short, a condemnation lawsuit would be treated somewhat like any other civil lawsuit.

HB 825 restores some needed equity to Montana's condemnation laws. Everyone involved would probably agree, however, that there was not a surplus of time to consider the bill in the House. (The House committee heard the bill on Friday; a subcommittee completely rewrote the bill 2 days later on the Sunday before the transmittal deadline.). We find the major problem with the bill to be an amendment, located on Page 5, lines 2 through 6 (hereinafter the Page 5 Amendment), and believe it should be deleted.

PROBLEMS WITH THE PAGE 5 AMENDMENT

1. The Condemnor Can Choose its own timeframe.

A major problem with the Page 5 Amendment is that it can easily be interpreted to allow the condemnor to choose when the landowner must appear in court to show cause why his property should not be condemned. (See page 5, line 5). This is patently unfair and contrary to the Montana Rules of Civil Procedure. The condemnor should not be allowed to arbitrarily create timeframes to suit its legal strategy, and then force these timeframes on a landowner in a judicial proceeding. The landowner in a condemnation suit, like a defendant in other civil lawsuits, should be allowed sufficient time to evaluate the claims against him and to investigate the relevant facts and law. In fact, the need to grant a landowner sufficient time to respond to the plaintiff's complaint in a condemnation action may

be more compelling than in the usual civil lawsuit because (1) the landowner's most fundamental private property rights may be at stake, and (2) the condemnor is likely to possess superior resources, expertise, and experience in the field of condemnation.

2. The show cause hearing is unfair.

As described above, the Page 5 Amendment can require the landowner to appear in court at a time specified by the condemnor. At that hearing, a landowner would essentially have to present his case-in-chief, his complete defense to all of the plaintiff's allegations on the question of why his land should not be condemned. With the exception of the issue of amount and method of compensation, all other issues would be before the court. Such issues could include (1) whether the condemnor's use is authorized by law, (2) whether the public interest requires the taking, (3) whether the condemnor possesses the right to condemn, (4) that the taking is necessary, (5) that a reasonable effort to purchase was made by the condemnor, (6) alternatives, or alternative routes or locations, and (7) determining what interest in property is required. These questions involve substantial legal and factual issues. The show cause hearing unreasonably inhibits the ability of the landowner to investigate these issues and prepare his defense. He is short-changed of the usual discovery tools and time afforded to other civil litigants.

3. The show cause hearing alters the burden of proof.

Under Montana law, the general rule in civil litigation is that the party making the affirmative allegations (the plaintiff condemnor) must prove his allegations by a "preponderance of the evidence." See 26-1-401, 26-1-402 MCA (1981). This general rule is altered by the show cause provision of the Page 5 Amendment. Under it, the landowner must show cause why his property should not be condemned, despite the fact that he did not initiate the lawsuit. This is unreasonable for the policy reasons already mentioned (private property at stake, and inferior resources, experience, expertise) and because it runs contrary to the general rule on burden of proof in civil litigation.

Compelling legal arguments support the position that the show cause hearing does not switch the burden of proof from the plaintiff to the defendant but, instead, shifts the burden of going forward with the evidence. The Montana Supreme Court has recognized that a show cause hearing can shift the burden of going forward with the evidence from the plaintiff to the defendant. See Gibbons v. Huntsinger, 105 Mont. 562, 74 P.2d 443 (1937). In any event, the show cause hearing in the Page 5 Amendment affects and shifts the burden of proof to the landowner in a significant way.

In sum, the short timeframe to prepare a defense, the disparity in resources and expertise, and the shift in burden of going forward with evidence merge to the distinct and unreasonable disadvantage of the landowner. For these reasons, the Page 5 Amendment should be deleted.

EFFECT OF ATTACHED AMENDMENTS

Amendment No. 2. This is the most substantive amendment. It deletes the Page 5 Amendment. The effect of this deletion is that the Montana Rules of Civil Procedure would, to a greater extent, govern the preliminary condemnation proceeding. For example, under these rules the defendant ordinarily must file its answer within 40 days of receipt of the complaint. Montana's existing eminent domain law requires application of the Rules of Civil Procedure to the extent they are not in conflict with the eminent domain law. See 70-30-201; page 4, line 17.

Amendment No. 5. This amendment benefits the condemnors. It requires the court and all parties to the preliminary condemnation proceeding to proceed expeditiously.

Amendment No. 1 and No. 4. These two amendments clarify that the plaintiff condemnor retains the burden of proof with respect to the five facts necessary to be found before condemnation. See 70-30-111, page 4.

Amendments No. 3 and No. 6. These are minor nomenclature amendments.

Dated this 10th day of March, 1983.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "PAT Smith", written in a cursive style.

Patrick L. Smith

Amendments to HB 825

1. Page 4, line 4, following the comma, STRIKE "it must appear" and INSERT "the plaintiff must show by a preponderance of the evidence".
2. Page 5, line 2, following the period, STRIKE the rest of line 2 through line 6.
3. Page 7, line 22, following "court", STRIKE "is satisfied" and INSERT "finds and concludes".
4. Page 8, line 1, STRIKE "facts necessary to be found before condemnation appear" and INSERT "plaintiff has met his burden of proof under 70-30-111".
5. Page 9, between lines 6 and 7, INSERT "(4) After a complaint as described in 70-30-203 is filed, and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give such proceedings expeditious and priority consideration. .
6. Page 13, line 25, STRIKE "answer" INSERT "statement".



MONTANA FARM BUREAU FEDERATION

502 SOUTH 19th

Dial 587-3153

BOZEMAN, MONTANA 59715

BILL NUMBER. HB 825

DATE MAR 11, 1983

SUPPORT ☒ OPPOSE ☐ AMMEND as amended

NAME PAT UNDERWOOD

COMMENTS:

*The Montana Farm Bureau supports
HB 825 as amended!*



WIFE Women Involved in Farm Economics

NAME JO BRUNNER BILL NO. HB 825
 ADDRESS 563 3rd St. HELENA DATE March 11/83
 REPRESENT WOMEN INVOLVED IN FARM ECONOMICS
 SUPPORT X OPPOSE AMEND

COMMENTS:

The members of the Women Involved in Farm Economics wish to support HB 825.

While we are not in complete accordance of the original bill submitted we find that ^{the} changes made are agreeable to us and will give us better protection in cases where crossing agriculture property is requested by eminent domain. *We support the amendments offered by H. P.* We believe also, that much of the language has been changed to be more agreeable with those initiating the process, and ~~once more~~ W.I.F.E. appreciates efforts ~~made by both sides in legislation such as this to cooperate for our mutual benefits.~~ *the fact that whitlins and others* We concur with HB 825 — *interests do need right of way but we* *concur with their attempt to protect* *our farmers and land interests!*

NAME: Michael E. Zimmerma DATE: 3-11-83

ADDRESS: 40 E Broadway

PHONE: 723-5421

REPRESENTING WHOM? MPC

APPEARING ON WHICH PROPOSAL: HB 825

DO YOU: SUPPORT? AMEND? X OPPOSE?

COMMENTS:

In its present form MPC can accept HB 825.

We are, however, preparing the attached amendments
to suggest to the committee further clarification

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

House Bill 825: Second Reading

1. Page 4, line 11.
Following: "(4)"
Strike: Remainder of subsection
Insert: "that an effort to obtain the interest sought to be condemned was made by submission of a written offer and that such offer was rejected; and"
2. Page 5, line 3.
Following: "answer"
Strike: "to the issue of public necessity"
3. Page 5, line 4.
Following: "appear" *specified in the summons*
Insert: "at a place and time, no sooner than 20 days following the service of the summons,"
4. Page 5, line 4.
Following: "cause"
Strike: "at a time and place specified therein"
5. Page 13, line 25.
Following: line 24
Strike: "answer"
Insert: "statement of claim of just compensation"
6. Page 14, line 11.
Following: line 10
Insert: "If the defendant fails to file a statement of claim of just compensation within 10 days as specified in 70-30-207, plaintiff may obtain a possession order provided for in this subsection subject to the condition subsequent that a plaintiff's payment into court shall be made within 10 days of receipt of the defendant's statement of claim."

House Bill 825: Second Reading

Amendment, page 4, line 11.

In its present form, House Bill 825 states five facts that must be found before property may be taken. One of these facts is: "that a reasonable effort to purchase the property was sought and a written offer was made and rejected" "Reasonableness" is a subjective standard that has not been delineated by the courts. This recommended amendment removes the subjectivity and retains the bill's intent that proof of a written offer to purchase be made and rejected before condemnation proceedings may be initiated.

Amendment, page 5, line 3.

MCA 70-30-202, amended by this section of House Bill 825, provides procedures filing the complaint and summons. Since the preceeding section contains five findings necessary before condemnation may be begun, the answer should not be restricted to just the issue of public necessity. This proposed amendment broadens the requirement so that the notice will indicate that an answer must be filed to respond to each issue stated in the complaint.

Amendment, page 5, line 4.

This amendment states that a show cause hearing may not be heard prior to the running of the time allotted the defendant to submit an answer to the complaint.

Amendment, page 13, line 25.

This is a housekeeping amendment to conform the language of MCA 70-30-311 to the changes House Bill 825 makes to MCA 70-30-207 which requires a defendant to file a "statement of his claim of just compensation." See page 9, line 18.

Amendment, page 14, line 11.

MCA 70-30-311 allows a court to put a condemnation plaintiff in possession after the payment into court of the amount of compensation claimed by the defendant in his statement of claim of just compensation. The proposed amendment addresses the possibility that the defendant may fail to file a statement of claim. This amendment may avoid unwarranted delay.

NAME: WARD SHANAHAN DATE: 3-11-83

ADDRESS: 301 FIRST BANK BLDG Helena P.O. Box 1715
59624

PHONE: 442-8560

REPRESENTING WHOM? Northern Tier Pipeline Company

APPEARING ON WHICH PROPOSAL: HR 825

DO YOU: SUPPORT? AMEND? XX OPPOSE?

COMMENTS: Oral Statement. We support the
Montana Power Amendment

We also believe the bill should be
further amended by deleting the words
"leasehold, or license" on page 3
line 21 of the second reading copy of the
bill.

Ward Shanahan

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Tom Ebzery DATE: _____

ADDRESS: 1500 Polk Dr. BILLINGS, MT

PHONE: 245-4881

REPRESENTING WHOM? Jongue River Railroad

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: We support the Yule as passed
by the House & also support the
Amendments of Montana Power. Oppose
Amendment #2 of ~~ATRS~~ Northern Plains
Resource Council

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)
Exhibit "G"

NAME: Mr. [unclear]

ADDRESS: 1112 - 7910

DATE: 11 Mar 66

PHONE: 1112 - 7910

REPRESENTING WHOM? Montana Public Employees

APPEARING ON WHICH PROPOSAL: HB 825

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: I support in intent from [unclear]
~~Section 4 of this act~~ and amendments w/o pay 5
the present law, they should be
dealt with in an interim bill in order to
take time to weigh the benefits and problems
of further changing the law.
There are in Montana a number of major economic sources
of our money ^{resources} ~~industries~~ - therefore the current
law should not be substituted without
first analysis. The potential economic effects -
if you believe that further resource development is
in the public interest in Montana.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

BEST COPY
AVAILABLE

support w/o pay 5
page 5 yet 4
amendment

NAME: Larry Murphy DATE: 3-11-83

ADDRESS: Great Falls

PHONE : _____

REPRESENTING WHOM? Mt. Farmers Union

APPEARING ON WHICH PROPOSAL: HB 825

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: As amended we support HB 825

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

3-11-83

Judiciary

VISITORS' REGISTER

[illegible]

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MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 12, 1983

The forty-first meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 12, 1983 at 9:05 a.m. in Room 325, State Capitol.

ROLL-CALL: All members were present.

CONSIDERATION OF HOUSE BILL 42: Representative Donaldson, District #29, principle sponsor of the bill, advised that it is one of three bills dealing with the agricultural commodity producers and dealers' problem of protection for payment of their commodities. A lien would attach to the agricultural commodity which need not be filed for 90 days under the provisions of this bill. At the end of the 90 day period it could be filed with the Secretary of State if payment has not been made.

Section 1 of the bill deals with definitions. Section 2 deals with the lien creation. Section 3 addresses the time the lien attaches. Section 4 deals with the duration of the lien. Section 5 clarifies the banks posture in this situation. Section 6 deals with the discharge of the lien. It was emphasized that the lien does not carry through three or four parties. Section 7 deals with filing notice of discharge and Section 8 deals with filing with the Secretary of State.

PROPOSERS: Jeanne Rankin, representing the Montana Farm Bureau Federation, advised that the members of her organization strongly endorse the bill and submitted her written testimony (see attached Exhibit "A"). She also read an excerpt from Dale Butz, Executive Director of Commodities of the Illinois Farm Bureau, which stated that a law similar to HB42 has been implemented in Illinois and under this law, no elevator has been denied credit.

Jo Brunner, representing Women Involved in Farm Economic's, testified in favor of this bill and felt it would be beneficial to their problem with bankruptcies.

There being no further proponents, the hearing was opened to the opponents.

OPPOSERS: Curt Hansen, representing the Montana Grain Elevator Association, testified in opposition to the bill. He admitted that it was well intended but enumerated five reasons why it would not adequately solve the problems (see attached Exhibit "B").

Elroy Letcher, Executive Secretary for the Montana Council of Cooperatives, appeared on behalf of the Farm Credit Banks of Spokane and voiced their concerns (see attached Exhibit "C").

ACTION ON HOUSE BILL 42: It was the consensus of the Committee that the two bills being heard in Agriculture may more effectively deal with the problem. Senator Mazurek moved to TABLE HB42. This motion carried unanimously.

ACTION ON HOUSE BILL 562: Senator Mazurek proposed to amend the bill to add consent as a defense. The Committee also determined the definition of "cohabitation." Senator Daniels felt the language on lines 17 and 18 and lines 21 and 22 was redundant because if the adoption takes place there is no longer a step-relationship. The age of consent was discussed. Senator Mazurek then moved to amend the bill as shown on the attached Committee Report. This motion carried unanimously. Senator Mazurek moved that AS AMENDED HB562 BE CONCURRED IN. This motion also carried unanimously.

RECONSIDERATION OF HOUSE BILL 660: The Committee agreed they should reconsider their action on House Bill 660. An amendment was proposed by Senators Turnage and Mazurek to require three prerequisites to the issuance of the letter. It was suggested that the defendant as well as the complainant should have the option to request a right to sue letter. The bill was then referred to counsel for research.

ACTION ON HOUSE BILL 825: It was agreed that the amendments proposed were complicated. Senator Daniels was concerned with where the burden of proof lies and that the condemnee must show cause. "Reasonable effort" was discussed. Senator Berg moved to adopt all of the Northern Plains' suggested amendments (see proposed amendments - March 11, 1983 Minutes). This motion carried unanimously. Senator Daniels moved to adopt #1, #5 and #6 of the Montana Power Company proposed amendments (see proposed amendments - March 11, 1983 Minutes). This motion carried unanimously. Senator Turnage then moved to strike "license" on page 3, line 21 and to insert "other interest." This motion carried unanimously. Senator Halligan moved that AS AMENDED HB825 BE CONCURRED IN and this motion passed unanimously.

ACTION ON HOUSE BILL 220: The Committee felt that HB220 would require the court to order the tenant to pay accrued rent. Some Committee members stated this bill was not really necessary. Senator Crippen moved HB220 BE CONCURRED IN. This motion failed with Senators Daniels, Halligan, Berg, Shaw and Brown voting in opposition. Senator Mazurek stated that the tenant has the ability to pay the court now, but this bill will require the court to be paid in every instance. He suggested leaving the court with some discretion. Senator Shaw moved that HB220 BE NOT CONCURRED IN. A roll-call vote was taken and the motion carried seven to two.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 3-12-83

NAME	PRESENT	ABSENT	EXCUSED
	✓		
<u>Berg, Harry K. (D)</u>			
	✓		
<u>Brown, Bob (R)</u>			
	✓		
<u>Crippen, Bruce D. (R)</u>			
	✓		
<u>Daniels, M. K. (D)</u>			
	✓		
<u>Galt, Jack E. (R)</u>			
	✓		
<u>Halligan, Mike (D)</u>			
	✓		
<u>Hazelbaker, Frank W. (R)</u>			
	✓		
<u>Mazurek, Joseph P. (D)</u>			
	✓		
<u>Shaw, James N. (R)</u>			
	✓		
<u>Turnage, Jean A. (R)</u>			

Each day attach to minutes.

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STANDING COMMITTEE REPORT

March 12

19 83

PRESIDENT

MR.

JUDICIARY

We, your committee on

having had under consideration House Bill No. 825

Jacobsen (Turnage)

Respectfully report as follows: That House Bill No. 825

third reading bill, be amended as follows:

1. Page 3, line 21.
Following: "or"
Strike: "license"
Insert: "other interest"
2. Page 4, line 4.
Following: "taken,"
Strike: "it must appear"
Insert: "the plaintiff must show by a preponderance of the evidence"
3. Page 4, line 11.
Following: "(4)"
Strike: remainder of subsection.
Insert: "that an effort to obtain the interest sought to be condemned was made by submission of a written offer and that such offer was rejected; and"

(Continued on Page 2)

XXXXXX And, as so amended,
DO PASS BE CONCURRED IN

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4. Page 5, line 2.

Following: "thereon."

Strike: the remainder of line 2 through line 6.

5. Page 7, line 22.

Following: "er-judge"

Strike: "is satisfied"

Insert: "finds and concludes"

6. Page 8, line 1.

Strike: line 1 through "appear"

Insert: "plaintiff has met his burden of proof under 70-30-111"

7. Page 9.

Following: line 6.

Insert: "(4) After a complaint as described in 70-30-203 is filed, and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give such proceedings expeditious and priority consideration.

8. Page 13, line 25.

Following: line 24.

Strike: "answer"

Insert: "statement of claim of just compensation"

9. Page 14, line 11.

Following: line 10.

Insert: "If the defendant fails to file a statement of claim of just compensation within 10 days as specified in 70-30-207, plaintiff may obtain a possession order provided for in this subsection subject to the condition subsequent that a plaintiff's payment into court shall be made within 10 days of receipt of the defendant's statement of claim."

And, as so amended,

BE CONCURRED IN

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 14, 1983

The forty-second meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 14, 1983, at 10:03 a.m., Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 505: Representative Bardanouve stated that he would like to address House Bills 489, 530, 533, 505, 531 and 532 as a whole rather than individually. Representative Bardanouve stated that these bills are intended to reflect a change in terminology and to bring Montana's laws into conformity with GAAP. He informed the Committee that GAAP stood for Generally Accepted Accounting Practices. Representative Bardanouve then explained that in HB531, the retirement division account will, under the terms of the bill, be referred to as the pension trust fund. He explained that this trust fund is not a permanent trust fund. HB 532 amends the worker's compensation fund law to refer to the industrial insurance account as a special revenue fund. This is an expendable trust. HB 489 will refer to the earmark revenue funds as the state special revenue funds. Representative Bardanouve testified that with this new terminology we will have an up-dated, modern form of laws for fiscal control. He also informed the Committee that Montana is in the forefront as far as modernizing our laws.

Morris Brusett, Director of the Department of Administration, testified that Montana needs to go along with Generally Accepted Accounting Practices. He stated a special task force which had been formed was in total agreement with these principles.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Galt inquired as to who was the Montana State Treasurer. Mr. Brusett responded that he was the ex officio state treasurer. Senator Turnage commented that these bills were an improvement and, hopefully, would not create any problems in the legislative process.

CONSIDERATION OF HOUSE BILL 179: Representative Bardanouve stated that HB179 is a bill to amend a law that he had introduced as a bill in 1963. This bill amends the Montana unclaimed property laws. Representative Bardanouve stated that the 1963 law regarding unclaimed property is responsible for placing \$3,703,000 in the State treasury. The interest collected on this money goes into the education trust fund to help our schools. Representative Bardanouve

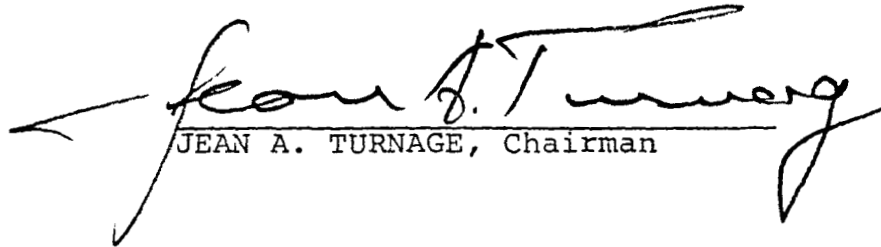
Senate Judiciary Committee
March 14, 1983
Page 3, 1983

and 532 BE CONCURRED IN. His motion carried unanimously.

ACTION ON HOUSE BILL 179: Senator Hazelbaker made a motion to strike the word "life" from the bill wherever it appears in front of the word "insurance". The motion carried with Senator Crippen voting in opposition. Senator Hazelbaker then made a motion that HB179 BE CONCURRED IN AS AMENDED. The motion carried with Senator Crippen voting in opposition.

FURTHER CONSIDERATION OF HOUSE BILL 825: Mr. Ward A. Shanahan, representing Northern Tier Pipeline, testified that he was concerned with the amendments made to HB825 on March 12. Mr. Shanahan stated that if the Committee strikes lines 2-6 on page 5 of the bill, the time frame becomes 1 to 1 1/2 years as litigation then falls under the Montana Rules of Civil Procedure. Since HB825 was already out of Committee, Mr. Shanahan was informed that the bill would have to be amended on the floor.

There being no further business to come before the Committee, the meeting was adjourned at 11:25 a.m.


JEAN A. TURNAGE, Chairman

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 15, 1983

The forty-third meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 15, 1983 at 10:00 a.m. in Room 325, State Capitol.

ROLL-CALL: All members were present.

CONSIDERATION OF HOUSE BILL 584: Representative Hannah, House District #67, principle sponsor of the bill, stated that he sponsored this bill on behalf of the Task Force on Corrections. He said that this bill clarifies the basic language. He stated that the bill increases the number of aggravating circumstances and has the effect of expanding the areas that we have on the books where the death penalty may be imposed. He said that in Line 6 of the Title, the key word is where it says "may".

There being no further proponents, the hearing was opened to the opponents.

OPPONENTS: Cathy Campbell, representing the Montana Association of Churches, spoke in opposition to this bill. She said the association is opposed to HB 584 because it is opposed to the death penalty. The Montana Association of Churches has looked at the issue of capital punishment in some depth and has come to the conclusion that it opposes it. Ms. Campbell also submitted written testimony. (Exhibit No. 1).

Senator Galt asked if county jails had been purposefully eliminated from "correctional facility" and Representative Hannah answered yes, saying we are dealing with different individuals in county jails who may be in there for a short time. The feeling was that in a state correctional facility inmates have nothing to loose by killing another inmate or another guard. We can justify the need for additional penalties for these inmates.

Senator Turnage asked John Maynard, what effect might the bill have on handling appeals of condemned persons. Mr. Maynard replied, that he didn't think this bill would have any effect. The aggravating circumstance that has been utilized in Montana, the only one that might have an effect, is No. 3 - by means of torture.

There being no further opponents, the hearing on HB 584 was closed.

CONSIDERATION OF HOUSE BILL 501: Representative Carol Farris, of House District No. 41, and sponsor of the bill, stated that the bill was introduced at the request of the Human Rights Commission. It implements a Montana Supreme Court ruling holding that marital status discrimination is unlawful discrimination. What it will do is it would allow employers to say he doesn't want two members of the same family.

PROPOSERS: Raymond Brown, representing the Montana Human Rights Commission, said that the language of the proposed bill is self-limiting because of the language of Section 49-2-402, MCA, which requires the word "reasonable" as used in Chapter, Title 49, to be strictly construed. He also submitted written testimony (Exhibit 2).

Mr. LeRoy Schramm, Chief Legal Counsel of the Montana University System, stated that SB 179 introduced by Senator Stimatz and this bill are worded slightly differently but the effect is almost identical. If you are a public official, you are prohibited by nepotism status of hiring your son or daughter. If you refuse to hire your son-in-law or daughter-in-law, it would be violating the civil rights law. If you refused to hire your spouse, it would be violating the State Human Rights Act. Your son or daughter are not related to you because of marital status. When you get to in-laws you get into nepotism statute. Once at the Havre campus and once at Montana Tech, a supervisor hired a spouse and the other his son-in-law, and the Commissioner's office refused to allow that. He said the Commissioner urges the Committee to pass the bill.

Chip Erdman, representing the Montana School Board Association, said that HB 501 will allow more consistency in this area.

There being no further proponents, the hearing was closed on HB 501.

CONSIDERATION OF HOUSE BILL 524: Representative Paula Darko, District #22, principle sponsor of the bill, advised that the bill was submitted at the request of the Human Rights Commission. She said it repeals Section 49-2-601 and submitted written testimony. (Exhibit 3):

Raymond Brown, Administrator of the Human Rights Commission, said that the Commission believes that the enforcement of the Human Rights Act is properly a matter for civil, not criminal, jurisdiction and therefore, recommends the repeal of Section 49-2-601, MCA. He submitted written testimony. (Exhibit 4).

There being no opponents, the hearing was closed on HB 524.

DISPOSITION OF HOUSE BILL 501: A motion was made by Senator Mazurek that House Bill No. 501 BE CONCURRED IN. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 524: A motion was made by Senator Mazurek that House Bill 524 BE CONCURRED IN. After brief discussion, the motion was withdrawn.

DISPOSITION OF HOUSE BILL 584: A motion was made by Senator Crippen that HOUSE BILL 584 Be Tabled. The motion carried unanimously.

FURTHER CONSIDERATION OF HB 825: Senator Turnage said that House Bill 825 is on second reading and the Committee either has to have it re-referred to the committee or handle it on the floor.

Ward Shanahan, representing the Northern Tier Pipeline, said the bill is essentially re-writing the show-cause chapter. On page 9

the amendment following line 6 provides a safeguard if the court feels a party needs more time. The court under the rules has the discretion to extend the time further. It can extend the hearing if any of the rights of a party are prejudiced.

Mr. Jim Beck, representing the Department of Highways, stated that he concurs with Mr. Shanahan. He said the usual practice is for the lawyers to set a date for trial without going before the judge to get a time set. There is a tendency for these cases to drag on.

Tim Stearns, representing Northern Plains Resources Council said the amendment submitted by NPRC gives the court flexibility. That amendment is virtually the same as Rule 6 of the 13th Judicial District. Mr. Shanahan added that amendment No. 7 (on the Standing Committee Report #5 submitted by NPRC) gives the court everything that he is talking about.

Senator Turnage repeated that the Committee can have the bill re-referred to the Judiciary Committee or can move it out on the floor.

Mr. Stearns said NPRC feels 60 days was unreasonable.

MOTION ON HOUSE BILL 825: A motion was made by Senator Crippen that House Bill 825 be re-referred back to the Judiciary Committee. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 808: Representative Kitselman, District No. 60, stated that he had thought long and hard on this proposal. The questions that came to his mind were "How can one prevent innocent people from being killed? How can one hold down traffic accidents? How can one protect and make easier our peace officer's jobs? How does one protect the rights of individuals through due process?" This bill, in his opinion, answers all of the aforementioned questions. This bill protects innocent people from drunk drivers, by requiring for the immediate suspension of one's driver's license. This is now permissible as long as the person has due process. A receipt is issued by the officer and the person may drive on that permit for a period of 48 hours. He then explained various sections of the bill. He also read a letter from Doris Fisher of MADD in support of the bill (See Exhibit No. 6).

Larry Majerus, Administrator of the Motor Vehicle Division, Department of Justice, testified in support of the bill stating that in 1982 there were 1385 refusals by drivers to submit to a chemical test compared to 700 two years ago. This has almost doubled in two years. He presented a proposed amendment to the Committee (Exhibit No. 7).

Michael Wood, representing the Missoula County Task Force for Prevention of Drunk Driving, spoke in favor of the bill. He also presented a fact sheet pertaining to drunk drivers (Exhibit No. 8).

Michael Wood also read a statement from Jim Nugent, Missoula City Attorney, in support of the bill (Exhibit No. 9). He referred to the

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 3/15/83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

HB 825
Encl 5

HOUSE BILL 825

Timeframe compromise

Page 5, line 2.

INSERT:

At anytime within 10 days after the defendant's answer has been filed, either party may request that the case be placed on the pre-trial calendar. Following such a request, the court shall mail to each attorney of record a notice of preliminary pre-trial conference. At the preliminary pre-trial conference, each attorney shall advise the court of the issues involved in the case, the amount of time necessary for discovery, and the estimated length of time of the trial. At the preliminary pre-trial conference, the court shall establish a time limit for discovery, a date for the final pre-trial conference and a trial date.

NAME _____ BILL NO. HB 825
ADDRESS _____ DATE Exh 5
WHOM DO YOU REPRESENT _____
SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Page 5, line 2.
Following: "thereon."
Insert: "A summons served under this chapter must contain a notice to the defendant to file and serve an answer. Within 40 days from the date the answer is required to be filed, the court shall commence its hearing on whether a preliminary condemnation order should issue."

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 16, 1983

The forty-fourth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 16, 1983 at 10:00 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 741: Representative Addy, District 62, stated that this bill was requested by the House Judiciary Committee.

Alec Hansen, representing the League of Cities and Towns, stated that they support this bill. Montana city attorneys would like to be included in the training programs offered by the Attorney General's Office. Mr. Hansen stated that city attorneys should have this training available for good understanding of the laws and on how to prosecute in the courts. He added that it received very strong support on the floor of the House.

There being no further proponents or opponents on this bill the hearing was closed on HB 741.

CONSIDERATION OF HOUSE BILL 774: Representative Addy, District 62, stated that there are two primary benefits to be gained from this bill: First, if attorneys feel a hearing is a serious matter, they would be able to not just look for anyone who is a shorthand reporter but a person who has been certified and has a level of competence. Secondly, the bill provides reciprocity - that is, someone who is certified as a shorthand reporter would be able to go to another state and automatically become certified there. Anyone who has worked as a regular shorthand reporter would be grandfathered in.

PROPONENTS: Jerome Anderson, representing the Montana Shorthand Reporter's Association, stated that he did want to address the fiscal note. It does indicate some fiscal impact.

Julie M. Lake, Secretary-Treasurer of the Montana Shorthand Reporters' Association, stated that the examination required by section 6 (3) requires that to pass you must complete all academic courses satisfactorily and pass at least three speed tests at 225 words per minute with 98 percent accuracy. She stated that Section 6(3) would not require reporters have a level of skill necessary to obtain an NSRA Certificate of Merit, but that they are able to meet the minimum requirements of graduation and the NSRA RPR test. This is for the public's protection. Ms Lake submitted her testimony in writing (Exhibit No. 1).

Mike Abley, Supreme Court Administrator, said in regard to the fiscal note on the bill, that it appears now there will be no cost to the state.

Senator Mazurek said he wanted the Committee to discuss the "grand-mother" provision. His understanding was that the reporters are asking for something that elevates them above the normal reporter.

A motion was made by Senator Crippen that the bill be amended on Page 5, lines 3 through 11, by striking subsection (5) in its entirety. Upon roll call vote the motion carried with Senator Turnage voting no.

A motion was then made by Senator Crippen that House Bill 774 As Amended Be Concurred In. Upon a 7 to 3 roll call vote, the motion carried.

A motion was then made by Senator Crippen that House Bill 331 be Taken from the Table. The motion carried unanimously.

A motion was then made by Senator Crippen that House Bill 376 be TAKEN FROM THE TABLE. The motion carried unanimously.

FURTHER CONSIDERATION OF HOUSE BILL 825: Ward Shanahan, representing Northern Tier Pipeline, said that there should not be a substantive change in the law of eminent domain. Therefore, if the bill can be amended on Page 4 by striking line 13 and the attached amendment for page 5, line 2, of the bill can be inserted, Northern Tier Pipeline Company can fully support this legislation, because it will then give the landowners great protection and provide for a more orderly procedure before the court. He submitted written testimony and amendments (Exhibit 5)

Patrick L. Smith, representing Northern Plains Resource Council, said that in the existing law there is no cut-off date for pre-trial legal activity. He sees the cut off period as a weakening of the existing law.

A motion was made by Senator Berg that House Bill 825 be amended on page 4, line 4 by inserting the language recommended by Ward Shanahan and by striking page 4, line 13. The motion carried unanimously.

It was decided that Mr. Shanahan and Mr. Smith should caucus together and come up with further amendments acceptable to both of them. Tomorrow the Committee will vote on the bill.

DISPOSITION OF HOUSE BILL 808: A motion was made by Senator Berg to Table House Bill 808. The motion carried unanimously.

ADJOURNMENT: Meeting was adjourned at 11:50 a.m.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 3-16-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Exhibit 5

M E M O R A N D U M

To: Members of Senate Judiciary Committee
From: Ward A. Shanahan
Re: HB 825 (Eminent Domain Revisions)
Date: March 16, 1983

Gentlemen:

The purpose of this memorandum is to clarify the position of Northern Tier Pipeline Company on HB 825 following a memorandum submitted to you on behalf of the Northern Plains Resource Council by Patrick L. Smith.

It is noteworthy that in his memorandum Mr. Smith stated the amendments he offered were to "clarify and advance what appears to be the primary purpose of HB 825: to give landowners a reasonable opportunity to defend their private property from condemnation actions." Mr. Smith also stated there was an "amendment" which came out of the House which occurred on page 5, lines 2-6, of the bill which created a problem. This statement is misleading because the statement which Mr. Smith objected to is already a part of the existing law which the Northern Plains Resource Council intended to rewrite in this bill. It is also inaccurate to state that the purpose of this bill was to give the landowners a "reasonable opportunity to defend." As originally introduced in the House, HB 825 would have removed all rights of railroads, pipeline companies, and mining companies to obtain necessary lands or easements to conduct their business.

If we presume, however, that the principal purpose of HB 825 as it now exists in the Senate is to "give landowners a reasonable opportunity to defend," then we are compelled to point out that the amendment suggested by the Northern Plains Resource Council and largely concurred in by this committee goes far beyond that objective.

GT

EXPRESS CHANGE IN THE BURDEN OF PROOF:

The Northern Plains Resource Council has stated it wants to be sure that the burden of proof is on the condemnor. Standing alone, we have no objection to this proposition. However, as rewritten in the House, the bill imposes an additional burden of proof upon the condemnor that does not exist in present law. This additional burden is set forth on page 4, line 13, of the bill, which creates a new subsection (5) to section 70-30-111, as follows:

(5) That the public interest requires the taking.

The present law requires in section 70-30-206(2):

(2) If the court or judge is satisfied from the evidence presented at the hearing provided for in 70-30-204 that the public interests require the taking of such lands and that the facts necessary to be found before condemnation appear, it or he must forthwith make and enter a preliminary condemnation order

The provision of section 70-30-206(2) is what is known as a conclusion of law drawn from the statutes of this state. In effect, if the judge is satisfied that the use sought by the condemnor is a "public use," then the "public interest" has been found and the only factual determination for the court is a question of whether or not property interest sought to be taken is "necessary to such use."

However, as now written, the question of "public interest" is a new fact question for which you have just shifted the complete "burden of proof" to the condemnor. But in doing so you have not defined what you mean by "public interest." Therefore, this provision is a substantive change in the law of eminent domain and creates the following problems:

1. The court must make an entirely subjective determination of what it thinks the "public interest" is; and

NAME Ward A. Shanahan BILL NO. HB 825
ADDRESS P.O. Box 1715, Helena, MT 59624 DATE 031683
WHOM DO YOU REPRESENT Northern Tier Pipeline Company
SUPPORT _____ OPPOSE _____ AMEND XXX

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Page 4, line 4. (Senate Standing Committee Report # 3)
Following: "evidence"
Insert: "that the public interest requires the taking
based on the following findings:"
2. Page 5, line 2.
Following: "thereon"
Insert: "A summons served under this chapter must
contain a notice to the defendant to file and
serve an answer. Within 40 days from the date the
answer is required to be filed, the court shall
commence its hearing on whether a preliminary
condemnation order should issue."

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VISITORS' REGISTER

[illegible]

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 825 be amended as follows:

1. Page 3, line 21.

Following: "or"

Strike: "license"

Insert: "other interest"

2. Page 4, line 4.

Following: "taken,"

Strike: "it must appear"

Insert: "the plaintiff must show by a preponderance of the evidence"

3. Page 4, line 11.

Following: "(4)"

Strike: remainder of subsection.

Insert: "that an effort to obtain the interest sought to be condemned was made by submission of a written offer and that such offer was rejected; and"

4. Page 5, line 2.

Following: "thereon."

Strike: the remainder of line 2 through line 6.

5. Page 7, line 22.

Following: "~~or~~-judge"

Strike: "is satisfied"

Insert: "finds and concludes"

6. Page 8, line 1.

Strike: line 1 through "appear"

Insert: "plaintiff has met his burden of proof under 70-30-111"

7. Page 9.

Following: line 6.

Insert: "(4) After a complaint as described in 70-30-203 is filed, and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give such proceedings expeditious and priority consideration."

8. Page 13, line 25.

Following: line 24.

Strike: "answer"

Insert: "statement of claim of just compensation"

9. Page 14, line 11.

Following: line 10.

Insert: "If the defendant fails to file a statement of claim of just compensation within 10 days as specified in 70-30-207, plaintiff may obtain a possession order provided for in this subsection subject to the condition subsequent that a plaintiff's payment into court shall be made within 10 days of receipt of the defendant's statement of claim."

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 17, 1983

The forty-fifth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage, at 10:02 a.m., on March 17, 1983, in Room 325, State Capitol.

ROLL CALL: All members were present with the exception of Senator Crippen whose absence was excused.

CONSIDERATION OF HOUSE BILL 629: Representative Brown submitted written testimony (see attached Exhibit "A") stating that the reason the bill has been proposed is that a question has been raised concerning how changes made in the election laws in 1979 have affected the law governing the submission of ballot issues by the Legislature to the people. Representative Brown stated that HB629 is a simple bill and asked the Committee for a favorable consideration.

There being no further proponents, no opponents and no questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 857: Representative Abrams stated that HB857 is a feasible approach to law enforcement problems and provides for cooperation with law enforcement agencies in neighboring states.

PROPOSERS: Col. R. W. Landon, representing the Montana Highway Patrol, submitted written testimony, (see attached Exhibit "B"). Mr. Landon stated that some of the areas where law enforcement officials run into problems are Cooke City, Lolo Pass and Decker, Montana. These areas are under Montana jurisdiction; however, they are more accessible to law enforcement officials of other states. This bill would provide Montana with the ability to enter into legal contracts with these other states to provide emergency services to areas such as the aforementioned. Mr. Landon feels that mutual aid will help make the best use of a scarce resource. Mr. Landon informed the Committee that the New England states have already utilized a measure such as HB857. He asked the Committee for favorable consideration.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Upon question from Senator Berg, Mr. Landon informed the Committee that Wyoming was very interested in entering into such an agreement with Montana.

There being no further questions from the Committee, the hearing was closed.

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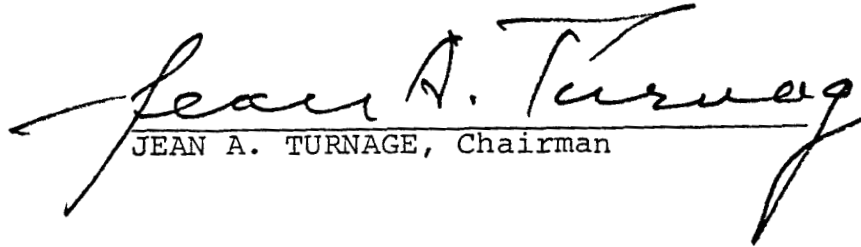
Senate Judiciary Committee
March 17, 1983
Page 4

ACTION ON HOUSE BILL 857: Senator Daniels moved that HB857 BE CONCURRED IN. His motion carried unanimously.

ACTION ON HOUSE BILL 825: Ward A. Shanahan and Patrick Smith submitted to the Committee their proposed amendments to HB825. It was agreed by the Committee to change some of the language in the amendments. Senator Galt moved that the amendments as proposed by Mr. Shanahan and Mr. Smith and as modified by the Committee BE ADOPTED. This motion carried unanimously. Senator Berg moved that HB825 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 179: Senator Berg moved to reconsider HB179. This motion carried unanimously. Senator Berg then moved to reconsider adopting the Committee's amendments to HB179. This motion carried unanimously. Senator Berg then moved that HB179 BE CONCURRED IN. This motion carried unanimously.

There being no further business to come before the Committee, the meeting was adjourned at 11:10 a.m.


JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 3/17/83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)			✓
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Patrick L. Smith and
NAME Ward A. Shanahan BILL NO. HB 825
ADDRESS P.O. Box 1715, Helena, MT 59624 DATE 031683
Northern Plains Resource Council and
WHOM DO YOU REPRESENT Northern Tier Pipeline Company
SUPPORT _____ OPPOSE _____ AMEND XXX

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Page 3, line 21.
Following: "or"
Strike: "license"
Insert: "other interest"
2. Page 4, line 4.
Following: "taken,"
Strike: "it must appear"
Insert: "the plaintiff must show by a preponderance
of the evidence that the public interest requires
the taking based on the following findings:"
3. Page 4, line 11.
Following: "(4)"
Strike: remainder of subsection
Insert: "that an effort to obtain the interest
sought to be condemned was made by submission of a
written offer and that such offer was rejected; and"
4. Page 4.
Strike: line 13
5. Page 5, line 2.
Following: "thereon."
Strike: remainder of line 2 through line 6
Insert: "A summons served under this chapter must
contain a notice to the defendant to file and
serve an answer. Within six (6) months from
the date the complaint is filed the court shall
commence its trial on whether a preliminary the court
condemnation order should issue unless it shortens
or enlarges the time for good cause shown."
6. Page 7, line 22.
Following: "or judge"
Strike: "is satisfied"
Insert: "finds and concludes"

7. Page 8, line 1.
Strike: line 1 through "appear"
Insert: "plaintiff has met his burden of proof under 70-30-111"
8. Page 9.
Following: line 6
Insert: "(4) After a complaint as described in 70-30-203 is filed, and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give such proceedings expeditious and priority consideration."
9. Page 13, line 25.
Following: line 24
Strike: "answer"
Insert: "statement of claim of just compensation"
10. Page 14, line 11.
Following: line 10
Insert: "If the defendant fails to file a statement of claim of just compensation within 10 days as specified in 70-30-207, plaintiff may obtain a possession order provided for in this subsection subject to the condition subsequent that a plaintiff's payment into court shall be made within 10 days of receipt of the defendant's statement of claim."

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STANDING COMMITTEE REPORT

March 17, 1923

MR. President

We, your committee on Senate Judiciary

having had under consideration House Bill No. 825
Jacobsen (Mazurek)

Respectfully report as follows: That House Bill No. 825
Third reading, be amended as follows:

1. Page 3, line 21.

Following: "or"

Strike: "license"

Insert: "other interest"

2. Page 4, line 4.

Following: "taken,"

Strike: "it must appear"

Insert: "the plaintiff must show by a preponderance of the evidence
that the public interest requires the taking based on the following
findings"

3. Page 4, lines 11 and 12.

Following: "(4)"

Strike: the remainder of line 11 and line 12 in its entirety
Insert: "that an effort to obtain the interest sought to be condemned
was made by submission of a written offer and that such offer was
rejected."

DO PASS

Continued on page 2

March 17,

1983

4. Page 4, line 13.

Strike: line 13 in its entirety

5. Page 5, lines 2 through 6.

Following: "thereon."

Strike: remainder of line 2 through "complaint" on line 6.

Insert: "A summons served under this chapter must contain a notice to the defendant to file and serve an answer. Within six months from the date the summons is served, unless the court shortens or enlarges that time for good cause, the court shall commence its trial on the issue of whether a preliminary condemnation order should be issued"

6. Page 7, line 22.

Following: "ex-judge"

Strike: "is satisfied"

Insert: "finds and concludes"

7. Page 8, line 1.

Strike: line 1 through "appear"

Insert: "plaintiff has met his burden of proof under 70-30-111"

8. Page 9, line 6.

Strike: ""

Insert: "(4) After a complaint as described in 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give such proceedings expeditious and priority consideration.""

9. Page 13, line 25.

Strike: "answer"

Insert: "statement of claim of just compensation"

10. Page 14, line 11.

Following: line 10

Insert: "(2) If the defendant fails to file a statement of claim of just compensation within the time specified in 70-30-207, the plaintiff may obtain an order for possession provided for in subsection (1), subject to the condition subsequent that a plaintiff's payment into court shall be made within 10 days of receipt of the defendant's statement of claim."

Renumber: subsequent subsections

MINUTES OF THE JUDICIARY COMMITTEE
April 5, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown in room 224A of the capitol building, Helena, Montana at 9:03 a.m. All members were present with the exception of Representative Seifert. Brenda Desmond, Staff Attorney for the Legislative Council, was also present.

HOUSE BILL 825

CHAIRMAN BROWN advised the committee that this bill was sent to this committee by motion of the House so that they can consider the Senate amendments to same. He stated that, as he understood the procedure, this bill should be treated like any other bill sent by motion from the floor; he would need a motion to concur or not concur in the Senate amendments; action should be taken; and then it should be reported back to the floor, setting out the committee's recommendation.

REPRESENTATIVE IVERSON moved TO CONCUR IN THE SENATE AMENDMENTS. The motion was seconded by REPRESENTATIVE FARRIS.

MS. DESMOND gave an outline of the amendments and what they appear to do. She said that in amendment #1, the term "interest" is broader than the term "license" and is, therefore, more precise; in amendment #2, this specifies that the standard of proof is "preponderance of evidence" and this will reorganize the section to make it clear that a showing of public interest underlies the condemnor's case; in amendment #3, it eliminates the word "reasonable" to avoid litigation on reasonableness in the initial stage of the proceeding, because this issue is appropriate for the second phase of proceedings.

REPRESENTATIVE ADDY interjected that he thought "reasonable" was eliminated because Chairman Turnage thought it was redundant and a standard of reasonableness was implied. MS. DESMOND agreed.

MS. DESMOND continued that amendment #4 was changed to conform with amendment #2; amendment #5 clarifies that the burden of proof is on the condemnor, not the condemnee

Judiciary Committee
April 5, 1983
Page Two

and to avoid unnecessary delay by putting in a six-month deadline unless the court shortens or lengthens that time for good cause; the amendment #6, which is on page 8, line 10, gives more specific legal language; amendment #7, which is on page 8, line 15, ties this in with amendment #2; amendment #8 is on page 9, line 21, subsection 4, and is similar to amendment #5 and shows that condemnation matters shall be expedited whenever possible; amendment #9, which is on page 14, line 22, is to conform with amendments to 70-30-207, (Section 7); amendment #10, page 15, lines 9 through 15, subsection 2, is to prevent delay in the condemnation proceedings, it requires that if the condemnor takes possession, he must make prompt payment to the condemnee, and provides that when the claimant does file statement of just compensation that payment by the condemnor must be made within ten days.

CHAIRMAN BROWN advised that, since this is a bit of an unusual procedure, they will ask anyone that wants to comment on the Senate amendments to the bill to do so as specifically as possible.

REPRESENTATIVE RAMIREZ commented that, in going through these amendments, there are some specific things he would like to have comments on.

CHAIRMAN BROWN suggested that they have questions from the committee and, if they run out of questions and anyone wants to add anything additional, they can do so at that time.

REPRESENTATIVE RAMIREZ said he would like this question addressed by everybody on both sides of the issue; i.e. on page 5, they are extending the period of time quite markedly over what it is today if he understands this amendment correctly; the only issue to be determined in this first hearing are the issues set forth on page 4, lines 9 through 14 which read "(1) that the use to which it is to be applied is a use authorized by law; (2) that the taking is necessary to such use;" and subsection (3) is applicable only if the property is already appropriated to some other public use; once that is determined, then

Judiciary Committee
April 5, 1983
Page Three

you have a whole separate proceeding basis to determine the amount of compensation so the issues are really pretty limited in the first hearing and you have to be fair to both sides; and he felt the present law does not give the landowner enough time to adequately respond so there does seem to be a need for an extension of time, but he felt that six months seems to be fairly lengthy for the determination of just those two issues, when, in some of these projects, time can mean an awful lot in cost and whether the project is even feasible. He asked that this question be addressed.

JIM BECK, Administrator of the Legal Division of the Department of Highways, advised the committee that the idea behind this was, not necessarily to lengthen the time to six months, but to avoid any time constraints up to six months, so, instead of under the old procedure of having to have show cause hearings at the time of the issuance of the complaint, there would be an answer filed on the question of necessity. He stated that, if there was a contest over the issue of necessity, then, it would be his feeling, that the condemning party would move to set the hearing at a time convenient to him; if that was not convenient or acceptable to the party who wanted to get the time changed, the outside time frame is six months so it is conceivable that they do not have to wait for six months to get this done.

REPRESENTATIVE RAMIREZ indicated that it seems to him, based on his practice of law, that when it says within six months, everyone is going to try and get the full six months; and even though they say that this is a maximum, you are establishing what the standard will be - everybody is going to say that they need six months to get ready for this - not everybody but most of them.

MR. BECK replied that he generally recognizes that this could be a potential problem, but he did not visualize this as causing too many problems, but maybe, some of the others would like to speak to this matter.

REPRESENTATIVE ADDY noted that just about anybody could get six months anyway if they wanted to.

Judiciary Committee
April 5, 1983
Page Three

WARD SHANAHAN, representing the Norther Tier Pipeline Company, exclaimed that this language is pretty much of a compromise that was worked out in the Senate Judiciary Committee with the Northern Plains Resource Council and the industry representatives. He noted that the only thing that still troubled him was that on line 15, he would feel much more comfortable, if there was a semi-colon after the word "answer", because he wanted it to be plain that the answer should be filed by the time required by the Rules of Civil Procedure and not within six months. He indicated that this was normally within twenty days, but the court can extend that for good cause; then, of course, the six months will apply to getting to the factual issue of necessity. He said that he did not intend to back off from the compromise as he agreed to six months, but he thought that semi-colon should be in there.

REPRESENTATIVE ADDY said there is a period in there now, is there not. MR. SHANAHAN replied that there is a comma. It was noted that this is a period. He said if it is a period, that is fine.

JAMES PATTEN, representing the Northern Plains Resource Council, pointed out that the court can enlarge or shorten the time for good cause shown; he is certain that the condemnor needs to expedite the hearing and they need to bring the matter before the judge and the judge can decide if that shorter time is justified.

REPRESENTATIVE RAMIREZ asked if he thought that would be that easy to do - as a practical matter, they are not going to be able to go in there and just have their own way; the other side, if it is really a contested matter is going to be fighting tooth and nail; good cause is a term that is a little vague and it depends a great deal on just how the judge perceives the situation. He felt that on a hotly contested matter, it is not going to be that automatic.

MR. PATTEN replied that it seems to him if the condemnor knows that he is going to be condemning that that gives

Judiciary Committee
April 5, 1983
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him plenty of time to anticipate the problems.

MR. BECK stated that it has been his experience that, if the landowner wants the time, the judge is going to give it to him in any event, so he did not think, from the Department of Highways' viewpoint, that they are giving away anything or creating any problem that they do not face right now. He commented that he has yet to see a landowner come in and ask for a time extension and not get it.

REPRESENTATIVE DAILY indicated that when you take the Northern Plains Resource Council and the Northern Tier Pipeline Company and they seem to compromise on everything, it would seem to him that they are not doing anything and he doesn't see the need for the bill at this point. He thought maybe they should just kill the bill and let it go the way it was.

REPRESENTATIVE ADDY noted that they had a couple of condemned landowners here and maybe they could shed some light on this.

REPRESENTATIVE DAILY asked if anyone has benefited from this other than the Northern Plain Resource Council.

MR. PATTEN said that he felt it was important to incorporate the Rules of Civil Procedure in this; it gives all parties the same rights they would have in any other litigation and he did not think it was really equitable that the landowner was put through a great disadvantage in a condemnation suit. He felt he should have all the same rights as a defendant in any other lawsuit; this is the main thrust of the bill - to put a condemned landowner in parity with any other defendant in any lawsuit.

MR. SHANAHAN testified that he has tried cases for both the condemnor and the condemnee; he understands that the original language is what you see on page 5, lines 9 through 13; this language was taken out of a section which this bill strikes and reinserted at that point

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because it involves taking the question of necessity to the judge. He explained that the historical reason for this is that this is an exercise in the sovereignty of the state; under our law, the state owns all the property; we merely hold property subject to the will of the sovereign; when a right is lent to a company like Northern Tier Pipeline, the state has recognized in the law that the right to build pipelines is a necessary use for the public good; and, therefore, they lend the power of eminent domain to exercise in order to get the property in order to build the pipeline. He noted on page 4, line 9, it states "that the use to which it is to be applied is a use authorized by law" and those uses are something the legislators recognize as a proper exercise of sovereign power of the state. He contended that if our company did not organize and build this particular facility, the state would have to do this itself in order to get a supply of crude oil. He indicated that the reason that show cause hearing was in there originally (it has been in the law for a hundred years) is that it was purely a question of law as to what the use was in the necessity for the taking. He said that what you are doing with this change is that you are raising the question that, under the rules of Civil Procedure, a person could demand a jury trial on the question of whether the property was necessary to the use; if that is the case, then you are extending the time that it will take in order to get this property, because if the jury decides contrary to the legislature that the taking is not necessary, then, essentially, the project is stopped. He noted that, up to this time, the question of good cause was merely coming forward to show why the engineering decision to build the pipeline, highway, etc. was not in accord with a reasonable engineering necessity - that is what the rule is right now. He thought, when you adopt this language, you raise the question of a jury deciding something else.

JO BRUNNER, representing Montana Women Involved in Farm Economics, stated that as far as agriculture is concerned, this is quite beneficial to us in her belief;

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she has never been involved in anything like this, but lives close to land that has had numerous electric power lines that go side by side by side taking tremendous amounts of land that you cannot crop because you have all those poles going through it. She contended that this would put the burden of proof for the need of that on someone else instead of them proving that the need isn't there, they would have to prove that the need is there.

BOB TULLY, representing the Northern Plain Resource Council and a rancher from Roundup, affirmed that this is not a narrow piece of legislation; it is not special interest legislation in any way, shape or form, unless you deem the interest of every property owner in the state of Montana as being restrained or narrow; and he submits that that is quite broad. He stated that it was brought out in the Senate Judiciary Committee that there was a need for and a desirability to change the adjustment of the condemnatory procedures in the state and there were no opponents to this bill - all spoke in favor of the bill. He indicated that there was a difference of opinion to degree of change, the language, etc., but there was no question, in anyone's mind apparently, but what the bill was necessary and advisable. He stated that the list was as long as your arm of those who were supporting this legislation and a number of them appeared asking that the legislature update our eminent domain proceedings.

ANN CHARTER, a member of the Bull Mountain Association and the Northern Plains Resource Council, explained that they were threatened by condemnation around 1970; at that time, they had a meeting and the county attorney told them what their rights were; he told them that they had no rights and they better take what the coal companies offer, which was \$1.00 an acre on the lease and a 1 cent royalty on the coal; he told them they would get more from their offer than going through the

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courts; this made them so mad that Mr. Tully and she went out and started the Bull Mountain Landowners' Association, which later became the Northern Plains Resource Council; and she said they were mad at him because they did not feel that they were being given the right advice; but on looking back, she thought that he was absolutely right - if they had gone to court they would have come out with nothing. She continued that, since then, they have gone through condemnation by the power company; out of the legion number of landowners that were condemned, there were three of them that had guts enough to go to court; a lot of the time during the seven years that this was in litigation, they wished they had been among the gutless because it is a very difficult thing for a layman to go through; but, as it proved out, the result of the whole thing was that they were given just compensation and it was so far above their offer, that there was absolutely no comparison. She pointed out that their desire is for equal status and she felt the law, as it now stands with all the thought and the work that has gone into it, will benefit; it is not perfect; they may be back later; they may not have heard the end of them; but the way it stands now is beneficial; and they are patient and are willing to take what they can get. She said that she just has a gut-feeling, knowing nothing about the judicial area, and from past experience, she has a feeling that even if you were to try to improve this bill at this point, that you could end up killing it by tampering with it; and if you want to kill it, that would be the way to do it. She testified that this is a good bill and they would like to see it stand the way it is.

CHAIRMAN BROWN pointed out that sixteen of them sitting at this table are not lawyers and this may be a strength.

REPRESENTATIVE HANNAH stated that this bill is designed to put this kind of litigation under the Rules of Civil Procedure according to Mr. Patten's testimony and he asked if that says that in here. MR. PATTEN replied

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that he did not think that it specifically says that in the bill, but the Rules of Civil Procedure would apply automatically unless the statute provides otherwise.

REPRESENTATIVE HANNAH asked how this was different from the present law. MR. PATTEN responded that the present law applies different time frames.

REPRESENTATIVE HANNAH asked if those time frames are shorter or longer - how do they compare. MR. PATTEN replied that the present law requires the defendant to appear within fifteen days after service, he thought, and the Rules of Civil Procedure allows twenty days; the Rules of Civil Procedure provides for discovery; and he thought the present law requires the defendant to appear in that fifteen days and basically be prepared to put his whole case forward within that fifteen days. He noted that the Rules of Civil Procedure do not require such expeditious preparation of the defense.

REPRESENTATIVE HANNAH asked if this allows a jury trial. MR. PATTEN answered that he did not understand Mr. Shanahan's argument as to how the bill will interject juries; the bill adds public interest requires the taking and he did not understand this argument.

MR. SHANAHAN stated that if you look in the bill, you will see that you have stricken the word "judge" and replaced it with "court" throughout.

REPRESENTATIVE ADDY said that he thought this was done in the House.

MR. SHANAHAN said that the language from the House "order to show cause hearing" was left in there, which is a type of remedy that is usually used in equitable remedies like an injunction, etc., wherein a court proceeds immediately to hear the facts. He continued that you strike all that out of there and you replace that with the requirement that the Montana Rules of Civil

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Procedure are applicable; and in these rules, it provides that in all cases where there is a question of fact to be decided, a jury trial can be demanded.

REPRESENTATIVE HANNAH asked if the industry people were aware of this when this came out of the Senate. MR. SHANAHAN responded that he was aware of it; you folks are the ones that hold the power; when he was in front of the Senate Judiciary Committee, they told him that unless he compromised with the Northern Plains Resource Council, they were going to strike the order to show cause hearing altogether and he contended that it would take him two years to get a decision on a question of necessity, so he compromised for six months.

REPRESENTATIVE RAMIREZ noted that the present law now says "the court or judge" and he believes that all the bill does is stike "or judge". He said that the court could be the judge or jury and he did not see what difference it would make by striking "or judge".

REPRESENTATIVE HANNAH wondered who determines whether it will be the court or the judge under the present law. REPRESENTATIVE RAMIREZ replied that, under Montana law, either party can request a jury.

REPRESENTATIVE HANNAH said that right now under Montana law, the landowner could go in and request a jury under this particular portion. REPRESENTATIVE RAMIREZ responded that he did not think he could demand a jury except on , but you can always get a jury on damages.

REPRESENTATIVE HANNAH asked if he would agree that this bill allows him to request a jury on the necessity question. MR. PATTEN replied that he thought he would agree with that.

REPRESENTATIVE RAMIREZ said that, if we now have a jury determination on necessity as Mr. Shanahan claims, what would happen then if you have different necessity hearings in different counties and had different jury

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verdicts on necessity. MR. SHANNAHAN responded that this is his principle problem - he was faced with a choice of having no accelerated provision at all or this six-month period by the Senate Judiciary Committee. He contended that he is still concerned about the question of a jury trial on the issue of necessity; right now it is a legal issue to be determined by the judge; he has 435 miles of pipeline to condemn; if Lewis and Clark County decides differently from Broadwater County, he cannot build that pipeline until he has the last inch; so he is going to be subject to a jury trial all the way across the state; and that is a real concern.

REPRESENTATIVE SPAETH asked how does this differ from having a judge decide all the way across the state - is that a different situation, as there are different judges making these decisions. MR. SHANAHAN said, in his experience, it takes longer with a jury; a district judge has general jurisdiction in the state of Montana; once a district judge has decided that the issue of necessity has been proved, he thought it became a simple matter to have that question certified and to have it become binding upon all the other district judges. He did not feel that this was necessarily so when you are faced with a jury. He indicated that when you are condemning this is not a pleasant proceeding, but it is a necessary proceeding. He felt that you can build a piece of highway in one county and not worry about the piece of highway in the next county for this year, but he cannot do anything until he gets the entire right-of-way.

MR. BECK indicated that you cannot build a piece of highway in one county; you don't condemn the whole stretch of highway; you condemn the individual land-owners and, if you got into the situation of a jury trial on the issue of necessity, you never know what a jury is going to do. He said that if you had your project planned and there were 150 parcels on this project; you go along and you have everybody but one; for some particular reason, the jury feels strongly

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that you should not have necessity on one parcel; it could even be emotional reasons; and then everything goes kapooey. He felt that by having the judge do it, you have someone who is trained in the law; conceivably who will look at the precise question to be decided for the elements that are stated in here, who will make his decision based on the facts and not on whether he was a friend of the landowner, whether his mother has been condemned or some piece of evidence that is extraneous to the proceeding. He thought that if you have juries on the question of necessity, you are going to stop highway projects; and he does not say that lightly, but he can see highway projects being totally stopped until you overturn the issue of necessity on an appeal and that takes six to eight months at a minimum or a year.

MR. SHANAHAN verified that he did appear in the Senate and opposed this very provision; he supported the bill, but opposed the attempt by the Northern Plains Resource Council to strike the show cause hearings and the Senate offered this compromise as an alternative.

MR. PATTEN indicated that he did not think that one judge in one district could make a decision on this and this would be binding on another judge in another district; he could see that it is entirely conceivable that one judge could make a finding in a particular case and across the county in a different judicial district, a judge might come to a different conclusion. He did not see how having a jury would make any difference in what is already there, as they have different judges.

CHAIRMAN BROWN wondered how many times has anybody asked for a jury trial in an eminent domain proceeding. MR. SHANAHAN replied never in his experience. MR. PATTEN responded that he had never heard of any.

REPRESENTATIVE RAMIREZ stated that he felt they were talking about a very, very important point; you can

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say that a judge from one county might decide differently than a judge in another county, and that is conceivable; but, if they are creating the right to a jury trial, juries in this kind of a situation are not totally objective and impartial, particularly in a small county for a large project that is condemning land there. He contended that there could be some real problems and it could stop a lot of projects. He stated that just because a project is conceived, he did not think that it should be constructed, but you could stop a justifiable project that is in the public interest because of a local jury that has a local axe to grind. He felt this was a major problem procedurally; but he thought this could be corrected fairly easily just by specifically indicating that there is no such right; then everybody would be satisfied; the Northern Plains should be satisfied as their attorney acknowledges that he doesn't think there should be a right to a jury trial and he felt that this is something that is extremely critical in this bill.

CHAIRMAN BROWN indicated that in the Highway Department they hire some of the best legal minds in the state and if there is ever a case to request a jury trial, this would be the case to do it and he does not understand if the existing statute provides for it, how this enhances it. He thought that everybody that went to court over an eminent domain proceeding right now would ask for a jury trial if possible.

REPRESENTATIVE RAMIREZ said that we are changing the law, but the question will be open and as long as they have the bill here, they should clarify it.

REPRESENTATIVE HANNAH asked Mr. Patten what his comments would be in regard to a jury trial on these proceedings. MR. PATTEN replied that he would disagree with REPRESENTATIVE RAMIREZ's understanding that he would have a problem with a jury trial; a jury is part of our judicial system; it has been part of our system for hundreds

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of years and he did not see any reason why a jury should be any more of a problem or more fallible than they are in any kind of a judicial proceeding that they might have.

REPRESENTATIVE HANNAH asked if he would have any objection to changing the language so that it was clear. MR. PATTEN replied that he did not have any objection to having a jury trial if one of the parties want it, but if the parties do not want a jury trial, it is not going to be forced on them.

REPRESENTATIVE HANNAH asked if he perceived, under the new language in this bill, there would be more jury trials in this particular area. MR. PATTEN responded that jury trials are allowed under the present law and he did not see why there would be any increase.

REPRESENTATIVE DAILY asked Mr. Beck if this bill the way it is written is not going to cause him a tremendous amount of problems. MR. BECK replied that as it stands now, he did not think it is, if they do not have jury trials. He noted that another point that should be made on jury trials and that is that in the far reaches of the empire, they do not have juries sitting all the time, such as in Plentywood, and in order to get the jury impaneled, you have to wait until they get a jury trial; if you have the six-month provision plus the inability to obtain a jury, whenever you might want one, then you are going to have a problem, especially if you do not get all the issues of necessity brought to issue at the time they have a jury trial. He said that a lot of people fail to realize that there are counties in Montana where you have law in motion once a month and scheduling necessity hearings in those counties is very difficult at the present and when you add the problem of impaneling a jury to decide the question of necessity, then, in his opinion, you are going to have inordinately long delays.

REPRESENTATIVE DAILY said that the way he understood that this bill is going to allow for jury trials and

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right now, the judge is making those decisions when it comes to necessity. He asked if this is the way it is. MR. BECK replied that at the present time, the judge decides the whole issue of necessity.

REPRESENTATIVE DAILY said that he just agreed that this bill was O.K. MR. BECK responded if you construe it not to allow jury trials; if it is allowed to construe jury trials, then the bill is not O.K. and he would strenuously object to it.

MR. SHANAHAN explained that they are not in a position wherein they are having a jury decide the rights between two parties, but they are dealing with the exercise of sovereign power of the state and the legislature is holding this; they are deciding whether the state should go ahead and exercise its right to retake property or whether it should not; because when they give this to a jury, the jury may well decide that it cannot be exercised.

REPRESENTATIVE DAILY asked if the judge is going to decide if it is necessary or if the jury is going to decide, under the way this bill is now. MR. SHANAHAN replied that he does not know - that is why he raised the question; that it is an up-for-grabs question and is moot until we get this thing in the first courthouse and the first judge decides that he only has the right to make this decision; someone demands a jury trial and appeals.

REPRESENTATIVE DAILY said that Mr. Beck doesn't think that this is a moot question considering his last question, because he is saying that this bill does not do that.

REPRESENTATIVE JENSEN said that it seemed to him that they should insert the original language "a court or a judge" if that is the only bone of contention that they have here if under the current law, juries are never used in determining necessity.

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REPRESENTATIVE KEYSER commented that if you think that is the only language that is going to effect this, they are not reading the bill very carefully. He noted that on page 4, starting with line 6 to line 8, that language there is absolutely civil procedure language; then you go to the bottom of that same page, and there is included as brand new language "including the Montana Rules of Civil Procedure"; as of this time, you do not have that in the bill; that is not being considered normally under any proceedings you have now; you are not taking it as a civil procedure, because if you go through the old language, "the facts necessary to be found before condemnation" and it goes on to say what will be considered as the rules and civil procedure is not included in there. He continued that now, under this bill, civil procedure is included very definitely and he would say that you have very definitely set up a procedure for court action by jury, in all cases if they want it.

REPRESENTATIVE ADDY commented that he thought that Title 25 under the present law, is applicable to these proceedings and that is, by and large, the Rules of Civil Procedure; the language on the bottom of page 4 adds the Montana Rules of Evidence, which is Title 26; and the Montana Rules of Civil Procedure are applicable. He said he wanted to clarify, if not narrow the differences that he sees developing here; i. e. previously following the Rules of Civil Procedure, the hearing on the issue of necessity was a show cause hearing, which by definition is before a court without a jury; now a full adversarial proceeding is allowed; he was sorry that Mr. Shanahan did not bring up the point, because the question of a jury is one that never occurred to him and when they were going through striking "judge" and putting "court" only is a question that never came up in his mind and he did not know if this was raised in any hearing. He felt that they were trying to redefine the relationship between the companies and the landowners; the most important thing that the landowners have been trying to do is to get more time, including the device of discovery prior to the time that the issue of necessity is decided; that tool of discovery - finding out just exactly what public use there is and a little more

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about the project that they are defending their land against in time to prepare a case like that - he thinks is the major procedural advance that they are trying to gain with this tool. He asserted that he had great faith in juries; there have been many divorce cases where he wished he had a jury; but the inquiry that is pursued by a jury or a judge is fairly well defined in section 2 now and what you are trying to do is make it clear that the burden of proof remains upon the condemnor all throughout the proceedings. He noted that before, when there was a show cause hearing, and he realizes that there is a difference between the burden of proof; i.e. if the evidence is dead even, then the burden of proof is on the plaintiff, then the plaintiff loses; if the burden of proof is on the defendant, then the defendant loses; with the show cause hearing, it was the defendant who really had the burden of going forward, which he felt was a big part of the burden of proof - you are guilty until proven innocent in a show cause hearing; and he thought that was the reason they were trying to get away from a show cause hearing; they want to keep, not only the burden of proof, but the burden of going forward on the company, who is trying to alter the status quo. He indicated that he guessed he could not jump up and down and say, "By God, I want to have a jury" in any hearing like this; and he can see why lawyers would want to argue this before a judge; a judge may be more likely to disqualify himself if they suspect bias on their part; perhaps there is going to be a juror that isn't going to tell the plaintiff's counsel, even if they are asked directly whether their grandmother has had her ranch condemned or not; and that can happen. He stated that what he is getting down to is whether they can insert the language limiting the necessity hearing to a hearing for a judge only without killing this bill, because that is exactly what he is concerned will happen, if they amend this bill and send it back to the Senate. He emphasized that he is genuinely concerned.

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REPRESENTATIVE RAMIREZ asked Representative Addy if he were trying to stop a project; you represent a land-owner, would he ask for a jury. He said that he could answer the question for him, because he knows that he would. REPRESENTATIVE ADDY replied that it would depend on which judge he draws, but all other things being equal, he would have a better chance with a jury, because if the jury decides it; then you can go to the judge and ask him to reconsider the jury's findings before you begin to appeal. He said this would give you one more step in the process.

REPRESENTATIVE RAMIREZ asked why did he think this bill is going to be dead, if we try to make that one change in it - he said he could not really agree with that and he asked what was the vote in the Senate on this. REPRESENTATIVE ADDY replied that the vote in the Senate was overwhelming; he did not know how many times this bill was heard; how many times it was considered and reconsidered; he thought it was kind of like the girl who cried "wolf"; if it goes back there right now, he is a little concerned that there might be some animosity due to the fact that they have to consider it once more.

CHAIRMAN BROWN commented that it would seem to him that the other alternative here is that the governor could apply a veto if he was convinced that there was a problem in this area.

REPRESENTATIVE ADDY said that if there is a change they would like to make in the bill and if they are not going to kill it by sending it back to the Senate one more time, he thought he would like to amend it.

MR. TULLY asserted that the fact is that they, the laymen of the Northern Plains Resource Council, have put forth their best efforts in support of this bill and hope for its passage; and in all honesty had no thought of stopping anything; they accept the principle down through the ages, from Roman times, of the sovereign right of the state; they do not question that; nor do they assume that there is much of a contest as to whether

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or not a project will go forward; what their main purpose has been throughout has been to end the possession of a pair of loaded dice or a stacked deck in the hands of the condemnor; and that is it simply in a nutshell; it has never been their contention or position that they were going to stop anything because they do believe and accept the power of the state for the greater benefit for the greater number and the possible sacrifice and disadvantage of the individual through condemnatory proceedings. He said that they acknowledge that and believe in it, so that has not ever, at any time, been their purpose; rather it has been to even the adversarial position - after all, someone wants to take something of ours and they feel that they should prove necessity and desirability from the public point of view; and then prove how little they should pay and how much, from their position, they should receive.

REPRESENTATIVE RAMIREZ moved that the Senate amendments BE NOT CONCURRED IN. REPRESENTATIVE HANNAH seconded the motion. He stated that he takes at face value what the gentlemen from the Northern Plains Resource Council has said; that that is one of the problems with an organization that comes in and testifies; i.e. they cannot come in and speak on behalf of everyone, even in their own organization, and they cannot speak for everyone in the public; there are people knowing that this potential exists will try to take advantage of it; we have to look not only at the people who are before us, but they have to look at what is the best interests of all of the people of the state of Montana. He indicated that he is not making this motion to try and kill the bill and he really did not think that it would kill the bill, if they were careful in the way they approached this; certainly, Speaker Kemmis is going to be able to appoint the members of the committee from the House side; and, if they have that one concern, which he felt was a legitimate concern, now is the time to clarify the language; they are not doing anything that anyone apparently objects to; we are just trying to make sure that they eliminate a question as to whether or not a jury can or cannot be called for; because if you can

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have a jury trial on necessity, you are going to have some tremendous problems and he has faith in the jury system up to a point, but he knows that juries are governed by emotion. He continued that, if he were representing a landowner, in trying to stop a project, he would rather take his chances with a jury, as he would have a better chance of making the kind of argument that might stop the condemnation. He felt he could look at this objectively, too, because he has land, where they have power lines going right through the middle; they have had land taken by condemnation by the highway; but if you are going to have these things, you have to have a procedure that does not permit people to obstruct the system. He said that he thought this bill has improved the situation by making it a more reasonable balance, but if they let that slip through and create that question, he thought they would be doing one of two things - they would be back here trying to correct it next time or they are going to hold up a lot of legitimate projects.

REPRESENTATIVE ADDY asked REPRESENTATIVE RAMIREZ if he were representing the Highway Department and they wanted to run a highway across the Martinsdale Hutterite colony, would you ask for a jury. He responded no and that wouldn't be fair either; as a practical matter, the Highway Department might very well make that decision, but what they would be doing is they would be trying to get the advantage of a prejudice against a certain group of people in order to make a legal determination. He did not feel that this would be any more right for them to do that, or to have the opportunity to do that, than it would be for someone on the other side to try to invoke some prejudice against this whole process to defeat the project.

REPRESENTATIVE ADDY said that maybe there would be a bias against the Highway Department.

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REPRESENTATIVE JENSEN asked REPRESENTATIVE RAMIREZ if he said that he believes in this process up until some point wherein you see the jury obstructing our judicial process. REPRESENTATIVE RAMIREZ responded that he did not say that; that is his interpretation of what he said; he said that juries are fallible; he has tried a lot of cases in front of juries; it is true that you have some methods to try and insure you are getting a good selection of unbiased jurors. He cited an example wherein the firm he was associated with was doing work for the old Northern-Pacific Railroad; he tried a case to a jury, wherein a guy had run into the side of a train; he asked the jurors if they had ever had any similar experience, where they had either had a close call or an accident involving a train; one of the prospective woman jurors replied that she had, i.e. she and her father had been driving near Bridger; there is a crossing there; her father had not seen the train; he was driving and at the last minute, he saw it and came to a stop; there was no accident, but it scared them a little bit. He continued that he asked her if there was anything in that experience that she felt would influence her; she replied that no there wasn't anything; he asked her if there was anything that would keep her from being totally objective; can you put that out of your mind; would that influence your decision in any way; and she replied no, no, no, it wouldn't make any difference. He indicated that he was told later, after having got an adverse jury verdict, that the first thing she said when she walked into the room was, "By God, they almost killed my father back at that railroad crossing and I'll never forget that." He contended that you have those problems with juries; in a small county, there can be an awful lot of emotion and he felt that what Mr. Beck has said is absolutely true, that there isn't a county anywhere where you can get twelve people anywhere, who did not have some axe to grind. He alleged that they don't like the Highway Department.

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REPRESENTATIVE JENSEN queried if it was his intention to replace the jury with a sitting judge. REPRESENTATIVE RAMIREZ replied that it is advisable to do what the procedures compel; it requires a court determination on that very narrow, legal and factual issue of necessity and that is all he felt should be preserved; we should make sure this is clear that they are not making any change; that is the procedure that will still be followed; and the rest of it, he did not care if they touched another part of this bill; and he means that sincerely.

REPRESENTATIVE HANNAH commented that they are not tampering with the compromise that has been handed out in the Senate; it would appear to him that that is where the movement was made in a conference to try and amend this bill and Representative Addy's concerns are well-founded that the Senate would probably say, "See you next session." He thought this was a legitimate concern; Representative Addy never recognized it; Senator Mazurek said that the Senate never talked about it; it is a new area; and, if he understood the testimony, it is a critical point. He said that that is the way it is being worked now; it is not a major thrust of either side to try and take it out; there is a potential for a lot of problems with it and he felt that Representative Ramirez is right; i.e. if they leave that particular area as a status quo, they would solve the potential for a lot of problems and there would be a lot of benefit from the bill, as far as the compromise that has been worked out.

REPRESENTATIVE SPAETH indicated that he is not absolutely certain whether or not the bill requires a jury trial or not - he hasn't been convinced that it does require a jury trial; and he was not sure if they were tilting the windmills on that particular issue; he did not have a lot of trouble with clarifying it if it doesn't put the bill in danger; he thinks it is a good bill otherwise; and he is not sure what is happening to this bill. He stated that he was surprised we were sitting on this bill as a committee and he wondered

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why they were doing this if there isn't something happening. He commented that he has to defend juries a little bit; he can tell horror stories about judges too; he can also tell about the advantages of judge shopping, which happens quite frequently in some condemnation cases that he knows of, where everyone uses their disqualifications to find a judge, which everyone seems to agree with; he did not feel that juries were that bad and he was surprised to hear that.

REPRESENTATIVE FARRIS commented that whatever prejudices there might be against a power line, a highway or a coal company, that might exist in a jury trial, they are outweighed by the part that says it has to show that it is in the public interest; that the public interest creates its own kind of prejudice and it is so much weighted, that it does not matter if there is a little prejudice against the company, the highway department or whatever, so she did not see that it was that important that they bother the Senate again with this bill.

REPRESENTATIVE ADDY indicated that if it is a minor amendment, and there is some language that he has seen that would add four words to Section 6, page 7, line 20, subsection 1 "the court, sitting without a jury, has power to"; if they can do that without upsetting the apple cart (and he does not have any trouble with not concurring with all the Senate amendments) he could vote for the motion at this point; but he wants to go over and talk to Senator Mazurek a little bit and he wants to stick his toes in the water in the Senate Judiciary Committee and see what they want to do.

CHAIRMAN BROWN said that he came prepared to kick this thing back to the floor and get it out of here; but he felt that there was some genuine concern about this one provision; and it would be the chair's intent that, if we concur in Representative Ramirez's motion, that a statement of intent from the committee as to the Do Not Concur motion goes to the floor saying

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basically what Representative Addy suggested in those three or four words; that that is the recommendation of this committee and the bill otherwise will not be touched.

The motion BE NOT CONCURRED IN was voted on. All voted aye with the exception of REPRESENTATIVE DARKO, REPRESENTATIVE VELEBER, REPRESENTATIVE SCHYE, REPRESENTATIVE JENSEN and REPRESENTATIVE FARRIS voting no.

REPRESENTATIVE DAILY said that this is obviously a very serious matter; it affects a lot of people on both sides of the question; he did not know why this committee would be afraid to send this to the Senate; and, if other questions arise as the result of the conference committee, we can address those questions. He contended that there has been several questions that have come up on this bill today, and they are serious questions and they concern a lot of people; he thought that if they are going to make a decision on eminent domain, which not only affects the state of Montana, but which affects Arco and a lot of other giant corporations, that they should have a free conference committee. He thought that if they are afraid of the Senate and afraid what the Senate will do, they should go home right now and he does not concur in what they are saying.

CHAIRMAN BROWN asked what he said. REPRESENTATIVE DAILY responded that he wanted to limit it and he did not think that they should do this.

CHAIRMAN BROWN said that they can't limit it by the statement of intent, but they can tell them where it is coming from.

REPRESENTATIVE SPAETH commented that Representative Hannah wanted him to say that he thought they needed a free conference committee in order to make those changes.

CHAIRMAN BROWN indicated that they could make the recommendations and the Speaker will have to decide.

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CHAIRMAN BROWN moved that a statement of intent of the committee's action be attached to their recommendation addressing the one problem. REPRESENTATIVE HANNAH seconded the motion.

REPRESENTATIVE EUDAILY explained that they can always come back and ask for a free conference committee if they see other things that have to be addressed.

CHAIRMAN BROWN stated that the Speaker will have to do what he thinks is necessary to accomodate this if the floor concurs and the floor might not concur in this motion.

The motion passed with REPRESENTATIVE DAILY voting no.

REPRESENTATIVE SPAETH said that, since they have all the parties here, he would like to ask before it goes to a conference committee, if any of the parties have any changes that they would like to suggest other than just clarifying it to the fact that there is no need for a jury trial in the issue of necessity.

MR. SHANAHAN indicated that as far as the Northern Tier Pipeline is concerned, the language that is suggested by Mr. Beck and repeated by Mr. Addy is satisfactory to them.

MR. PATTEN indicated that it was acceptable to the Northern Plains Resource Council.

DON ALLEN, representing the Rocky Mountain Oil and Gas Association, stated that he has not seen the language, but he would accept the expertise of Mr. Shanahan; but he felt that the jury question is a real concern from the standpoint of these small pipelines and oil field gathering operations and drilling operations. He thought this would clarify it a lot.

There were no further questions or comments and the hearing on this bill was closed.

STANDING COMMITTEE REPORT

APRIL 5, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE AMENDMENTS TO HOUSE

Bill No. 825

Third reading copy (Blue)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE EMINENT DOMAIN LAWS; AMENDING SECTIONS 70-30-101, 70-30-102, 70-30-110, 70-30-111, 70-30-201 THROUGH 70-30-203, 70-30-205, 70-30-207, 70-30-301, 70-30-302, 70-30-304, 70-30-308 THROUGH 70-30-310, AND 70-30-313, MCA; REPEALING SECTIONS 69-13-104, 70-30-104, 70-30-204, 70-30-206, 70-30-305, 70-30-311, 70-30-321, 70-30-322, 82-2-201 THROUGH 82-2-212, 82-2-221 THROUGH 82-2-224, AND 82-10-301 THROUGH 82-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That SENATE AMENDMENTS TO HOUSE

Bill No. 825

BEST COPY
AVAILABLE

BE NOT CONCURRED IN

60-783

STATE PUB. CO.
Helena, Mont.

TRAIL BOARD

Chairman

COMMITTEE SECRETARY

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The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

REPRESENTATIVE DAVE BROWN
HOUSE DISTRICT 83

HOME ADDRESS:
3040 OTTAWA
BUTTE, MONTANA 59701
PHONE (406) 782-3604

COMMITTEES:

JUDICIARY, CHAIRMAN
NATURAL RESOURCES
HIGHWAYS
ENVIRONMENTAL QUALITY COUNCIL, VICE-CHAIRMAN

April 5, 1983

Representative Daniel Kemmis
Speaker of the House of Representatives
Capitol Building
Helena, Montana

Dear Sir:

The House Judiciary Committee, in executive action held on April 5, 1983, voted to recommend to the House Committee of the Whole that it not concur with the Senate amendments to House Bill 825 and that a conference committee on the amendments be convened.

The House Judiciary Committee recommends nonconcurrence because of one issue that was raised during its meeting on the bill. That issue is the question of availability of a jury trial in a proceeding for a preliminary condemnation order. It is the intention of the House Judiciary Committee that the conference committee act on this issue only, and that it act on this issue by clarifying that a jury trial is not available in the preliminary condemnation proceedings.

Very truly yours,

A handwritten signature in black ink that reads "Dave Brown".

Dave Brown, Chairman
House Judiciary Committee

cc: Senator Stan Stephens
Senator Jean Turnage

1 HOUSE BILL NO. 825

2 INTRODUCED BY JACOBSEN, BERTELSEN, BARDANOUVE, KEMMIS,

3 OCHSNER, DONALDSON, REAM, SOLBERG, BACHINI,

4 ASAY, SHONTZ, SCHYE, THOFT

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE

7 EMINENT DOMAIN LAWS; AMENDING SECTIONS 70-30-101-70-30-102,

8 70-30-103-70-30-111-70-30-201-THROUGH-70-30-203,

9 70-30-205-70-30-207-70-30-301-70-30-302-70-30-304,

10 70-30-308-THROUGH-70-30-318-AND-70-30-319-MCA-REPEALING

11 SECTIONS 69-13-104-70-30-104-70-30-204-70-30-206,

12 70-30-305-70-30-311-70-30-321-70-30-322-82-2-201-THROUGH

13 82-2-212-82-2-221-THROUGH-82-2-224-AND-82-10-301-THROUGH

14 82-10-305-MCA-AND-PROVIDING-AN-IMMEDIATE-EFFECTIVE-DATE

15 70-30-104, 70-30-111, 70-30-201 THROUGH 70-30-203,

16 70-30-206, 70-30-207, 70-30-308, 70-30-309, 70-30-311, AND

17 70-30-313, MCA: REPEALING SECTIONS 70-30-204 AND 70-30-205,

18 MCA."

19

20 WHEREAS, title 70, chapter 30, MCA, is in need of

21 revision; and

22 WHEREAS, the legislature finds that the rights, duties,

23 and procedures set out in this act are necessary to

24 implement the provisions of Article II, section 29, of the

25 Montana Constitution;

1 THEREFORE it is the intent of the legislature that the
2 use of the power of eminent domain be limited to the state,
3 its political subdivisions and certain other entities that
4 the power of eminent domain be used for purposes that
5 directly benefit and are available to the public that
6 persons whose property is taken be accorded the same rights
7 and obligations as other civil litigants that condemnors
8 may acquire only the minimum property rights necessary for
9 the public use involved and must pay to the condemnee the
10 value of the property as determined by its highest and best
11 use; and that condemnors have no right to enter the property
12 sought to be condemned until a court determines that the
13 exercise of the right of eminent domain is proper and in
14 accordance with the requirements of Title 70, chapter 39,
15 MCAs as amended by this act.

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Refer to Introduced Bill

19 (Strike everything after the enacting clause and insert:)

20 Section 1. Section 70-30-104, MCA, is amended to read:

21 "70-30-104. What estates and rights in land may be
22 taken. The following is a classification of the estates and
23 rights in lands subject to be taken for the public use:

24 (1) such estate or rights as may be necessary up to
25 and including a fee simple when taken for public buildings

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or grounds or for permanent buildings or for an outlet for a flow or a place for the deposit of debris or tailings of a mine or for the mining and extracting of ores, metals, or minerals when the same are owned by the plaintiff but located beneath or upon the surface of property where the title to said surface vests in others or for the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the appropriation is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of 1 year of the use for which the same was appropriated, and thereupon the ownership of the residue of natural gas therein remaining shall likewise vest in the then owners of such reservoir space.

(2) such estate or rights in the surface as are necessary for a reservoir or dam and for the permanent flooding that results, up to the edge of the maximum pool of the reservoir;

(3) an easement, leasehold, or license ~~OTHER INTEREST, FOR SO LONG AS THE INTEREST IS NECESSARY FOR THE PURPOSE DESCRIBED IN THE COMPLAINT, OR FEE SIMPLE~~ when taken for any other use;

(4) the right of entry upon and occupation of land and

the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use."

Section 2. Section 70-30-111, MCA, is amended to read:

"70-30-111. Facts necessary to be found before condemnation. Before property can be taken, ~~IT MUST APPEAR THE PLAINTIFF MUST SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT THE PUBLIC INTEREST REQUIRES THE TAKING BASED ON THE FOLLOWING FINDINGS:~~

(1) that the use to which it is to be applied is a use authorized by law;

(2) that the taking is necessary to such use;

(3) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use;

~~(4) that a reasonable effort to purchase the property was sought and a written offer was made and rejected and THAT AN EFFORT TO OBTAIN THE INTEREST SOUGHT TO BE CONDEMNED WAS MADE BY SUBMISSION OF A WRITTEN OFFER AND THAT SUCH OFFER WAS REJECTED.~~

~~that the public interest requires the taking."~~

Section 3. Section 70-30-201, MCA, is amended to read:

"70-30-201. Applicable rules of practice. Except as otherwise provided in this chapter, the provisions of ~~the~~ Titles 25 and 26, including the Montana Rules of Civil Procedure and the Montana Rules of Evidence, are applicable

1 to and constitute the rules of practice in the proceedings
2 mentioned in this chapter."

3 Section 4. Section 70-30-202, MCA, is amended to read:

4 "70-30-202. Jurisdiction and venue -- complaint and
5 summons required. All proceedings under this chapter must be
6 brought in the district court of the county in which the
7 property or some part thereof is situated. They must be
8 commenced by filing a complaint and issuing a summons
9 thereon. ~~A summons served under this chapter must contain a~~
10 ~~notice to the defendant to file and serve an answer to the~~
11 ~~issue of public necessity and to appear and show cause at a~~
12 ~~time and place specified therein why the property described~~
13 ~~should not be condemned as prayed for in the complaint~~ A
14 SUMMONS SERVED UNDER THIS CHAPTER MUST CONTAIN A NOTICE TO
15 THE DEFENDANT TO FILE AND SERVE AN ANSWER WITHIN 6 MONTHS
16 FROM THE DATE THE SUMMONS IS SERVED. UNLESS THE COURT
17 SHORTENS OR ENLARGES THAT TIME FOR GOOD CAUSE, THE COURT
18 SHALL COMMENCE ITS TRIAL ON THE ISSUE OF WHETHER A
19 PRELIMINARY CONDEMNATION ORDER SHOULD BE ISSUED."

20 Section 5. Section 70-30-203, MCA, is amended to read:

21 "70-30-203. Contents of complaint. The complaint must
22 contain allege:

23 (1) the name of the corporation, association,
24 commission, or person in charge of the public use for which
25 the property is sought, who must be styled plaintiff;

1 (2) the names of all owners, mortgagees, and
2 lienholders of record and any other claimants of the
3 property of record, if known, or a statement that they are
4 unknown, who must be styled defendants;

5 (3) a statement of the right of plaintiff;

6 ~~(4) statements of each of the facts necessary to be~~
7 ~~found in 70-30-111;~~

8 ~~(5) (1) if a right-of-way is sought, the complaint must~~
9 ~~show the location, general route, and termini and must be~~
10 ~~accompanied with a map thereof, so far as the same is~~
11 ~~involved in the action or proceeding;~~

12 ~~(5) (2) a description of each piece of land interest in~~
13 ~~real property sought to be taken and whether the same~~
14 ~~includes the whole or only a part of the entire parcel or~~
15 ~~tract. All parcels lying in the county and required for the~~
16 ~~same public use may be included in the same or separate~~
17 ~~proceedings, at the option of the plaintiff, but the court~~
18 ~~may consolidate or separate them to suit the convenience of~~
19 ~~the parties. When application for the condemnation of a~~
20 ~~right-of-way for the purposes of sewerage is made on behalf~~
21 ~~of a settlement or a town or a county, the county~~
22 ~~commissioners of the county may be named as plaintiffs.~~

23 ~~(6) (1) if a sand, stratum, or formation suitable for~~
24 ~~use as an underground natural gas storage reservoir is~~
25 ~~sought to be appropriated, a description thereof and of the~~

land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 82-10-304."

Section 6. Section 70-30-206, MCA, is amended to read:

"70-30-206. Powers of court -- preliminary condemnation order. (1) The court or judge has power to:

(a) regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e) and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the

United States; or

(b) determine whether or not the use for which the property is sought to be appropriated is a public use within the meaning of the laws of this state; limit the interest in real property sought to be appropriated if in the opinion of the court the interest sought is not necessary.

(c) limit the amount of property sought to be appropriated if in the opinion of the court or judge the quantity sought to be appropriated is not necessary.

(2) If the court or judge is satisfied EINDS AND CONCLUDES from the evidence presented at the hearing provided for in 70-30-204 that the public interests require interest requires the taking of such lands interest in real property and that the facts necessary to be found before condemnation appear PLAINTIFF HAS MET HIS BURDEN OF PROOF UNDER 70-30-111, it or he must forthwith make and enter a preliminary condemnation order that the condemnation of the land or other interest in real property may proceed in accordance with the provisions of this chapter.

(3) If the property sought to be appropriated is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court or judge shall direct the commissioners to ascertain and

1 determine the amount to be paid by the plaintiff to each
 2 person for his interest in the property sought to be
 3 appropriated for use as such underground natural gas storage
 4 reservoir and/or as the annual rental for the use of such
 5 underground gas storage reservoir and for the use of so much
 6 of the surface as is required in the operation of the
 7 underground gas storage reservoir and for the use in
 8 connection with the creation, operation, and maintenance
 9 thereof and for all the native gas contained in said
 10 reservoir as compensation and damages by reason of the
 11 appropriation of such property. However, the amount to be
 12 paid for such native gas and all thereof shall be no less
 13 than the market value of such gas. The court shall appoint
 14 three persons, qualified as experts and recommended as such
 15 by the board of oil and gas conservation, to assist and
 16 advise the commissioners in determining the compensation and
 17 damages to be paid by plaintiff to each person for his
 18 interest in the property sought to be appropriated, and the
 19 fees and expenses of such persons shall be chargeable as
 20 costs of the proceedings to be paid by the plaintiff.

21 (41) AFTER A COMPLAINT AS DESCRIBED IN 70-30-203 IS
 22 FILED AND PRIOR TO THE ISSUANCE OF THE PRELIMINARY
 23 CONDEMNATION ORDER, ALL PARTIES SHALL PROCEED AS
 24 EXPEDITIOUSLY AS POSSIBLE, BUT WITHOUT PREJUDICING ANY
 25 PARTY'S POSITION WITH ALL ASPECTS OF THE PRELIMINARY

1 CONDEMNATION PROCEEDING INCLUDING DISCOVERY AND TRIAL, THE
 2 COURT SHALL GIVE SUCH PROCEEDINGS EXPEDITIOUS AND PRIORITY
 3 CONSIDERATION."

4 Section 7. Section 70-30-207, MCA, is amended to read:
 5 "70-30-207. Appointment of commissioners --
 6 qualifications -- affidavit. (1) ~~Immediately upon making and~~
 7 ~~entering the preliminary condemnation order, the judge must~~
 8 ~~meet with the respective parties or their attorneys of~~
 9 ~~record for the purpose of appointing condemnation~~
 10 ~~commissioners to ascertain and determine the amount to be~~
 11 ~~paid by the plaintiff to each owner or other persons~~
 12 ~~interested in such property by reason of the appropriation~~
 13 ~~of such property. The appointment of~~ within 10 days of
 14 entry of a preliminary condemnation order, the defendant
 15 shall file a statement of his claim of just compensation. If
 16 within 20 days of service of defendant's claim plaintiff
 17 fails to accept the claim, the court must appoint
 18 condemnation commissioners and the commission hearing may be
 19 waived by written consent of both parties, in which case the
 20 proceeding shall be conducted in the district court as if
 21 the case had been appealed from an award by such
 22 commissioners.

23 (2) The court must thereupon appoint three qualified,
 24 disinterested condemnation commissioners, unless appointment
 25 has been waived. One of such commissioners shall be

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1 nominated by the party or parties plaintiff. One of such
 2 commissioners shall be nominated by the party or parties
 3 defendant. The third commissioner shall be the chairman and
 4 shall be nominated by the two commissioners previously
 5 nominated. However, if said two commissioners fail to make
 6 such choice at the time of their appointment, then such
 7 nomination shall be made by the presiding judge.

8 (3) Each commissioner shall possess the following
 9 qualifications:

10 (a) a citizen of the United States and over 18 years
 11 of age;

12 (b) that he is not more than 70 years of age;

13 (c) that he is in possession of natural faculties, of
 14 ordinary intelligence, and not decrepit;

15 (d) that he is possessed of sufficient knowledge of
 16 the English language;

17 (e) that he was assessed on the last assessment roll
 18 of a county within the judicial district in which the action
 19 is pending;

20 (f) that he has not been convicted of malfeasance in
 21 office or any felony or other high crime;

22 (g) that he is not related within the sixth degree to
 23 any party;

24 (h) that he does not stand in the relation of guardian
 25 and ward, master and servant, debtor and creditor, or

1 principal and agent or partner or surety as to any party.

2 (4) At the time of such meeting and nominations, there
 3 shall be filed with the court by each nominating party or
 4 judge an affidavit of the person so nominated stating
 5 substantially as follows:

6 (a) that he has formed no unqualified opinion or
 7 belief as to the compensation to be awarded in the
 8 proceeding or as to the fairness or unfairness of the
 9 plaintiff's offer for the lands and improvements of the
 10 defendants;

11 (b) that he has no enmity against or bias in favor of
 12 any party and has not discussed, communicated, or overheard
 13 or read any discussion or communication from any party
 14 relating to values of the lands in question or the
 15 compensation offered, demanded, or to be awarded;

16 (c) that if selected as a condemnation commissioner,
 17 he is willing to serve and will well and truly try the
 18 issues of compensation and render a true decision according
 19 to the evidence and in compliance with the instructions of
 20 the court;

21 (d) that he will not discuss the case with anyone
 22 except the other commissioners until a decision has been
 23 filed with the court."

24 Section 8. Section 70-30-308, MCA, is amended to read:

25 "70-30-308. How payment made -- execution or annulment

for nonpayment. (1) Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and be distributed to those entitled thereto. However, at the option of the defendants, payments may be made:

(a) ~~if a fee simple interest in the defendants' land is taken~~ on an annual basis, utilizing the installment contract method; ~~or~~

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned; ~~or~~

~~(c) if an easement over or through the defendants' property is involved in either a single payment or in not more than five consecutive annual installments.~~

(2) If the money be not so paid or deposited, the defendants may have execution as in civil cases, and if the money cannot be made on execution, the court ~~or judge~~, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant if possession has been taken by the plaintiff."

Section 9. Section 70-30-309, MCA, is amended to read:

"70-30-309. Final order of condemnation -- contents --

vesting upon filing. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court ~~or judge~~ must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified."

Section 10. Section 70-30-311, MCA, is amended to read:

"70-30-311. Putting plaintiff in possession. (1) At any time after the filing of the preliminary condemnation order or after the report and assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court ~~or any judge thereof at chambers~~ upon application of the plaintiff shall have power to make an order that, upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his answer STATEMENT OF CLAIM OF JUST COMPENSATION under 70-30-207 or the amount assessed either by the commissioners or by the jury, as the case may be, the plaintiff be authorized:

(a) if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or

(b) if not in possession, to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation and that all actions and proceedings against the plaintiff on account thereof be stayed until such time.

~~(2) IF THE DEFENDANT FAILS TO FILE A STATEMENT OF CLAIM OF JUST COMPENSATION WITHIN THE TIME SPECIFIED IN 10-30-207, THE PLAINTIFF MAY OBTAIN AN ORDER FOR POSSESSION PROVIDED FOR IN SUBSECTION (1), SUBJECT TO THE CONDITION SUBSEQUENT THAT A PLAINTIFF'S PAYMENT INTO COURT SHALL BE MADE WITHIN 10 DAYS OF RECEIPT OF THE DEFENDANT'S STATEMENT OF CLAIM.~~

~~(2)(3) However, where an appeal is taken by such defendant, the court or judge may, in its or-his discretion, require the plaintiff before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking with sufficient sureties to be approved by the judge court and to be in such sum as the court or-judge may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the~~

property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

~~(3)(4) The amount assessed by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment but may appeal in the same manner and with the same effect as if no money had been deposited or security given. In all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money so deposited and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment but may, notwithstanding, take and prosecute his appeal from such assessment; provided that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received all~~

1 or any part of the amount deposited shall be liable to the
 2 plaintiff for any excess of the amount so received by him
 3 over the amount finally assessed, with legal interest on
 4 such excess from the time such defendant received the money
 5 deposited, and the same may be recovered by action; and
 6 provided, further, that upon any appeal from assessment by
 7 the commissioners to a jury, the jury may find a less as
 8 well as an equal or greater amount than that assessed by the
 9 commissioners; and provided, further, that the court shall
 10 not order the delivery to any defendant of more than 75% of
 11 the money deposited on his account except upon posting of
 12 bond by such defendant equal to the amount in excess of 75%,
 13 with sureties to be approved by the court, to repay to the
 14 plaintiff such amounts withdrawn as are in excess of his
 15 final award in the proceedings."

16 Section 11. Section 70-30-313, MCA, is amended to
 17 read:

18 "70-30-313. Current fair market value. Current fair
 19 market value is the price that would be agreed to by a
 20 willing and informed seller and buyer, taking into
 21 consideration, but not limited to, the following factors:

22 (1) the highest and best reasonably available use of
 23 ~~the property~~ and its value for such use, ~~provided current~~
 24 ~~use may not be presumed to be the highest and best use;~~

25 (2) the machinery, equipment, and fixtures forming

1 part of the real estate taken; and

2 (3) any other relevant factors as to which evidence is
 3 offered."

4 ~~NEW SECTION.~~ Section 12. Repealer. Sections 70-30-204
 5 and 70-30-205, MCA, are repealed.

6 ~~NEW SECTION.~~ Section 13. Saving clause. This act does
 7 not affect rights and duties that matured, penalties that
 8 were incurred, or proceedings that were begun prior to the
 9 effective date of this act.

-End-

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April 8, 1983

FREE CONFERENCE COMMITTEE..... 19.....
ON HOUSE BILL 825
(Report No. 1, 8:00 A.M.)

Mr. Speaker:

We, your Free Conference Committee on House Bill 825,
met and considered:

Senate Judiciary Committee amendments of March 18, 1983.

We recommend as follows:

That the House accede to Senate Judiciary Committee
amendments of March 18;

That House Bill 825 be further amended as specified in
Clerical Instructions 1 and 2; and

That this Free Conference Committee report be adopted.

CLERICAL INSTRUCTIONS FOR REFERENCE COPY (SALMON)

1) Page 5, line 17

Following: "COURT"

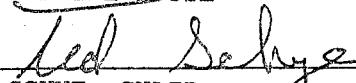
Insert: ", sitting without a jury,"

2) Page 10, line 3

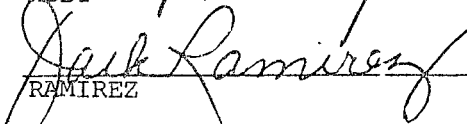
Following: "CONSIDERATION."

Insert: "The preliminary condemnation proceeding shall be
tried by the court sitting without a jury."

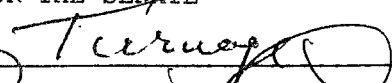
FOR THE HOUSE

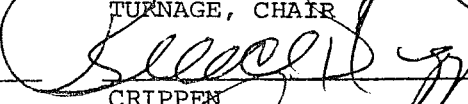

SCHYE, CHAIR

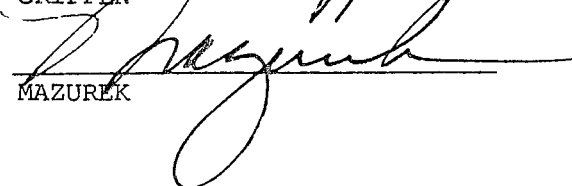

ADDY


RAMIREZ

FOR THE SENATE


TURNAGE, CHAIR


CRIPPEN


MAZUREK

Chairman.

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HOUSE BILL NO. 825

INTRODUCED BY JACOBSEN, BERTELSEN, BARDANOUVE, KEMMIS,
OCHSNER, DONALDSON, REAM, SOLBERG, BACHINI,
ASAY, SHONTZ, SCHYE, THOFT

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
EMINENT DOMAIN LAWS; AMENDING SECTIONS 70-30-101, 70-30-102,
70-30-110, 70-30-111, 70-30-201, THROUGH 70-30-203,
70-30-205, 70-30-207, 70-30-301, 70-30-302, 70-30-304,
70-30-306, THROUGH 70-30-310, AND 70-30-313, MCA; REPEALING
SECTIONS 69-13-104, 70-30-104, 70-30-204, 70-30-206,
70-30-305, 70-30-311, 70-30-321, 70-30-322, 82-2-201, THROUGH
82-2-212, 82-2-221, THROUGH 82-2-224, AND 82-10-301, THROUGH
82-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
70-30-104, 70-30-111, 70-30-201, THROUGH 70-30-203,
70-30-206, 70-30-207, 70-30-308, 70-30-309, 70-30-311, AND
70-30-313, MCA; REPEALING SECTIONS 70-30-204 AND 70-30-205,
MCA."

WHEREAS, title 70, chapter 30, MCA, is in need of
revision; and

WHEREAS, the legislature finds that the rights, duties,
and procedures set out in this act are necessary to
implement the provisions of Article IV, section 29, of the
Montana Constitution;

1 THEREFORE, it is the intent of the Legislature that the
2 use of the power of eminent domain be limited to the state,
3 its political subdivisions, and certain other entities; that
4 the power of eminent domain be used for purposes that
5 directly benefit and are available to the public; that
6 persons whose property is taken be accorded the same rights
7 and obligations as other civil litigants; that condemnors
8 may acquire only the minimum property rights necessary for
9 the public use involved and must pay to the condemnee the
10 value of the property as determined by its highest and best
11 use; and that condemnors have no right to enter the property
12 sought to be condemned until a court determines that the
13 exercise of the right of eminent domain is proper and in
14 accordance with the requirements of Title 70, Chapter 30,
15 MCA, as amended by this act.

16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Refer to Introduced Bill

19 (Strike everything after the enacting clause and insert:)

20 Section 1. Section 70-30-104, MCA, is amended to read:

21 "70-30-104. What estates and rights in land may be

22 taken. The following is a classification of the estates and

23 rights in lands subject to be taken for the public use:

24 (1) such estate or rights as may be necessary up to

25 and including a fee simple when taken for public buildings

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1 or grounds or for permanent buildings or for an outlet for a
 2 flow or a place for the deposit of debris or tailings of a
 3 mine or for the mining and extracting of ores, metals, or
 4 minerals when the same are owned by the plaintiff but
 5 located beneath or upon the surface of property where the
 6 title to said surface vests in others or for the underground
 7 storage of natural gas by a natural gas public utility as
 8 defined in 82-10-301. When the appropriation is for the
 9 underground storage of natural gas, all of the right, title,
 10 interest, and estate in the real property and in the subsand
 11 stratum, formation, or reservoir so appropriated shall be
 12 determinable and for all purposes terminate upon abandonment
 13 or upon cessation for the period of 1 year of the use for
 14 which the same was appropriated, and thereupon the ownership
 15 of the residue of natural gas therein remaining shall
 16 likewise vest in the then owners of such reservoir space.

17 (2) such estate or rights in the surface as are
 18 necessary for a reservoir or dam and for the permanent
 19 flooding that results, up to the edge of the maximum pool of
 20 the reservoir;

21 (3) an easement, leasehold, or license OTHER INTEREST,
 22 for so long as the interest is necessary for the purpose
 23 described in the complaint, or fee simple when taken for any
 24 other use;

25 (4) the right of entry upon and occupation of land and

1 the right to take therefrom such earth, gravel, stones,
 2 trees, and timber as may be necessary for some public use."

3 Section 2. Section 70-30-111, MCA, is amended to read:

4 "70-30-111. Facts necessary to be found before
 5 condemnation. Before property can be taken, ~~it must appear~~
 6 THE PLAINTIFF MUST SHOW BY A PREPONDERANCE OF THE EVIDENCE
 7 THAT THE PUBLIC INTEREST REQUIRES THE TAKING BASED ON THE
 8 FOLLOWING FINDINGS:

9 (1) that the use to which it is to be applied is a use
 10 authorized by law;

11 (2) that the taking is necessary to such use;

12 (3) if already appropriated to some public use, that
 13 the public use to which it is to be applied is a more
 14 necessary public use;

15 ~~(4) that a reasonable effort to purchase the property~~
 16 ~~was sought and a written offer was made and rejected and~~
 17 THAT AN EFFORT TO OBTAIN THE INTEREST SOUGHT TO BE CONDEMNED
 18 HAS MADE BY SUBMISSION OF A WRITTEN OFFER AND THAT SUCH
 19 OFFER WAS REJECTED.

20 ~~(5) that the public interest requires the taking.~~

21 Section 3. Section 70-30-201, MCA, is amended to read:

22 "70-30-201. Applicable rules of practice. Except as
 23 otherwise provided in this chapter, the provisions of ~~the~~
 24 Titles 25 and 26, including the Montana Rules of Civil
 25 Procedure and the Montana Rules of Evidence, are applicable

1 to and constitute the rules of practice in the proceedings
2 mentioned in this chapter."

3 Section 4. Section 70-30-202, MCA, is amended to read:

4 "70-30-202. Jurisdiction and venue -- complaint and
5 summons required. All proceedings under this chapter must be
6 brought in the district court of the county in which the
7 property or some part thereof is situated. They must be
8 commenced by filing a complaint and issuing a summons
9 thereon. ~~A summons served under this chapter must contain a~~
10 ~~notice to the defendant to file and serve an answer to the~~
11 ~~issue of public necessity and to appear and show cause at a~~
12 ~~time and place specified therein why the property described~~
13 ~~should not be condemned as prayed for in the complaint A~~
14 SUMMONS SERVED UNDER THIS CHAPTER MUST CONTAIN A NOTICE TO
15 THE DEFENDANT TO FILE AND SERVE AN ANSWER, WITHIN 6 MONTHS
16 FROM THE DATE THE SUMMONS IS SERVED, UNLESS THE COURT
17 SHORTENS OR ENLARGES THAT TIME FOR GOOD CAUSE, THE COURT,
18 SITTING WITHOUT A JURY, SHALL COMMENCE ITS TRIAL ON THE
19 ISSUE OF WHETHER A PRELIMINARY CONDEMNATION ORDER SHOULD BE
20 ISSUED."

21 Section 5. Section 70-30-203, MCA, is amended to read:

22 "70-30-203. Contents of complaint. The complaint must
23 contain allege:

24 (1) the name of the corporation, association,
25 commission, or person in charge of the public use for which

1 the property is sought, who must be styled plaintiff;

2 (2) the names of all owners, mortgagees, and
3 lienholders of record and any other claimants of the
4 property of record, if known, or a statement that they are
5 unknown, who must be styled defendants;

6 (3) a statement of the right of plaintiff;

7 ~~(4) statements of each of the facts necessary to be~~
8 ~~found in 70-30-111;~~

9 ~~(4)(5)~~ if a right-of-way is sought, the complaint must
10 show the location, general route, and termini and must be
11 accompanied with a map thereof, so far as the same is
12 involved in the action or proceeding;

13 ~~(5)(6)~~ a description of each piece of land interest in
14 real property sought to be taken and whether the same
15 includes the whole or only a part of the entire parcel or
16 tract. All parcels lying in the county and required for the
17 same public use may be included in the same or separate
18 proceedings, at the option of the plaintiff, but the court
19 may consolidate or separate them to suit the convenience of
20 the parties. ~~When application for the condemnation of a~~
21 ~~right-of-way for the purposes of sewerage is made on behalf~~
22 ~~of a settlement or a town or a county, the county~~
23 ~~commissioners of the county may be named as plaintiff.~~

24 ~~(6)(7)~~ if a sand, stratum, or formation suitable for
25 use as an underground natural gas storage reservoir is

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1 sought to be appropriated, a description thereof and of the
 2 land in which it is alleged to be contained and a
 3 description of all other property and rights sought to be
 4 appropriated for use in connection with the appropriation of
 5 the right to store natural gas in and withdraw natural gas
 6 from such reservoir. In addition, the complaint shall state
 7 facts showing that the underground reservoir is one subject
 8 to appropriation by plaintiff; also stating that the
 9 underground storage of natural gas in the land sought to be
 10 appropriated is in the public interest; that the underground
 11 reservoir is suitable and practicable for natural gas
 12 storage; that the plaintiff in good faith has been unable to
 13 acquire the rights sought to be appropriated hereunder and a
 14 statement that the rights and property sought to be
 15 appropriated are not prohibited by law; and in addition, the
 16 complaint must be accompanied by a certificate from the
 17 board of oil and gas conservation as set forth in
 18 82-10-304."

19 Section 6. Section 70-30-206, MCA, is amended to read:

20 "70-30-206. Powers of court -- preliminary
 21 condemnation order. (1) The court or judge has power to:

22 (a) regulate and determine the place and manner of
 23 making the connections and crossings and enjoying the common
 24 uses mentioned in 70-30-103(1)(e) and of the occupying of
 25 canyons, passes, and defiles for railroad purposes, as

1 permitted and regulated by the laws of this state or of the
 2 United States; or

3 (b) ~~determine whether or not the use for which the~~
 4 ~~property is sought to be appropriated is a public use within~~
 5 ~~the meaning of the laws of this state; limit the interest in~~
 6 ~~real property sought to be appropriated if in the opinion of~~
 7 ~~the court the interest sought is not necessary.~~

8 ~~(c) limit the amount of property sought to be~~
 9 ~~appropriated if in the opinion of the court or judge the~~
 10 ~~quantity sought to be appropriated is not necessary.~~

11 (2) If the court or judge is satisfied FINDS AND
 12 CONCLUDES from the evidence presented at the hearing
 13 provided for in 70-30-204 that the public interests require
 14 interest requires the taking of such lands interest in real
 15 property and that the facts necessary to be found before
 16 condemnation appear PLAINTIFF HAS MET HIS BURDEN OF PROOF
 17 UNDER 70-30-111, it or he must forthwith make and enter a
 18 preliminary condemnation order that the condemnation of the
 19 land or other interest in real property may proceed in
 20 accordance with the provisions of this chapter.

21 (3) If the property sought to be appropriated is a
 22 sand, stratum, or formation suitable for use as an
 23 underground natural gas storage reservoir and the existence
 24 and suitability of it for such use has been proved by
 25 plaintiff upon substantial evidence, the order of the court

1 or-judge shall direct the commissioners to ascertain and
 2 determine the amount to be paid by the plaintiff to each
 3 person for his interest in the property sought to be
 4 appropriated for use as such underground natural gas storage
 5 reservoir and/or as the annual rental for the use of such
 6 underground gas storage reservoir and for the use of so much
 7 of the surface as is required in the operation of the
 8 underground gas storage reservoir and for the use in
 9 connection with the creation, operation, and maintenance
 10 thereof and for all the native gas contained in said
 11 reservoir as compensation and damages by reason of the
 12 appropriation of such property. However, the amount to be
 13 paid for such native gas and all thereof shall be no less
 14 than the market value of such gas. The court shall appoint
 15 three persons, qualified as experts and recommended as such
 16 by the board of oil and gas conservation, to assist and
 17 advise the commissioners in determining the compensation and
 18 damages to be paid by plaintiff to each person for his
 19 interest in the property sought to be appropriated, and the
 20 fees and expenses of such persons shall be chargeable as
 21 costs of the proceedings to be paid by the plaintiff.

22 141 AFTER A COMPLAINT AS DESCRIBED IN 70-30-203 IS
 23 FILED AND PRIOR TO THE ISSUANCE OF THE PRELIMINARY
 24 CONDEMNATION ORDER, ALL PARTIES SHALL PROCEED AS
 25 EXPEDITIOUSLY AS POSSIBLE, BUT WITHOUT PREJUDICING ANY

1 PARTY'S POSITION, WITH ALL ASPECTS OF THE PRELIMINARY
 2 CONDEMNATION PROCEEDING INCLUDING DISCOVERY AND TRIAL. THE
 3 COURT SHALL GIVE SUCH PROCEEDINGS EXPEDITIOUS AND PRIORITY
 4 CONSIDERATION. THE PRELIMINARY CONDEMNATION PROCEEDING SHALL
 5 BE TRIED BY THE COURT SITTING WITHOUT A JURY."

6 Section 7. Section 70-30-207, MCA, is amended to read:
 7 "70-30-207. Appointment of commissioners --
 8 qualifications -- affidavit. (1) ~~immediately-upon-making-and~~
 9 ~~entering--the-preliminary-condemnation-order--the-judge-must~~
 10 ~~meet-with-the--respective--parties--or--their--attorneys--of~~
 11 ~~record---for---the---purpose---of---appointing--condemnation~~
 12 ~~commissioners-to-ascertain-and-determine-the--amount--to--be~~
 13 ~~paid--by--the--plaintiff--to--each--owner--or--other-persons~~
 14 ~~interested-in-such-property-by-reason-of--the--appropriation~~
 15 ~~of--such--property. The--appointment--of~~ Within 10 days of
 16 entry of a preliminary condemnation order, the defendant
 17 shall file a statement of his claim of just compensation. If
 18 within 20 days of service of defendant's claim plaintiff
 19 fails to accept the claim, the court must appoint
 20 condemnation commissioners and the commission hearing may be
 21 waived by written consent of both parties, in which case the
 22 proceeding shall be conducted in the district court as if
 23 the case had been appealed from an award by such
 24 commissioners.

25 (2) The court must thereupon appoint three qualified,

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1 disinterested condemnation commissioners, unless appointment
 2 has been waived. One of such commissioners shall be
 3 nominated by the party or parties plaintiff. One of such
 4 commissioners shall be nominated by the party or parties
 5 defendant. The third commissioner shall be the chairman and
 6 shall be nominated by the two commissioners previously
 7 nominated. However, if said two commissioners fail to make
 8 such choice at the time of their appointment, then such
 9 nomination shall be made by the presiding judge.

10 (3) Each commissioner shall possess the following
 11 qualifications:

12 (a) a citizen of the United States and over 18 years
 13 of age;

14 (b) that he is not more than 70 years of age;

15 (c) that he is in possession of natural faculties, of
 16 ordinary intelligence, and not decrepit;

17 (d) that he is possessed of sufficient knowledge of
 18 the English language;

19 (e) that he was assessed on the last assessment roll
 20 of a county within the judicial district in which the action
 21 is pending;

22 (f) that he has not been convicted of malfeasance in
 23 office or any felony or other high crime;

24 (g) that he is not related within the sixth degree to
 25 any party;

1 (h) that he does not stand in the relation of guardian
 2 and ward, master and servant, debtor and creditor, or
 3 principal and agent or partner or surety as to any party.

4 (4) At the time of such meeting and nominations, there
 5 shall be filed with the court by each nominating party or
 6 judge an affidavit of the person so nominated stating
 7 substantially as follows:

8 (a) that he has formed no unqualified opinion or
 9 belief as to the compensation to be awarded in the
 10 proceeding or as to the fairness or unfairness of the
 11 plaintiff's offer for the lands and improvements of the
 12 defendants;

13 (b) that he has no enmity against or bias in favor of
 14 any party and has not discussed, communicated, or overheard
 15 or read any discussion or communication from any party
 16 relating to values of the lands in question or the
 17 compensation offered, demanded, or to be awarded;

18 (c) that if selected as a condemnation commissioner,
 19 he is willing to serve and will well and truly try the
 20 issues of compensation and render a true decision according
 21 to the evidence and in compliance with the instructions of
 22 the court;

23 (d) that he will not discuss the case with anyone
 24 except the other commissioners until a decision has been
 25 filed with the court."

14

Section 8. Section 70-30-308, MCA, is amended to read:

"70-30-308. How payment made -- execution or annulment for nonpayment. (1) Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and be distributed to those entitled thereto. However, at the option of the defendants, payments may be made:

(a) ~~if--a--fee-simple-interest-in-the-defendants--land is taken~~ on an annual basis, utilizing the installment contract method; or

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned, or

~~(c) if--an--easement--over--or--through--the--defendants' property is involved, in either a single payment or in not more than five consecutive annual installments.~~

(2) If the money be not so paid or deposited, the defendants may have execution as in civil cases, and if the money cannot be made on execution, the court or judge, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant if possession has been taken by the plaintiff."

Section 9. Section 70-30-309, MCA, is amended to read:

"70-30-309. Final order of condemnation -- contents -- vesting upon filing. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court or judge must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified."

Section 10. Section 70-30-311, MCA, is amended to read:

"70-30-311. Putting plaintiff in possession. (1) At any time after the filing of the preliminary condemnation order or after the report and assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court or any judge thereof at chambers upon application of the plaintiff shall have power to make an order that, upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his answer STATEMENT OF CLAIM OF JUST COMPENSATION under 10-30-207 or the amount assessed either by the commissioners

or by the jury, as the case may be, the plaintiff be authorized:

(a) if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or

(b) if not in possession, to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation and that all actions and proceedings against the plaintiff on account thereof be stayed until such time.

~~(2) IF THE DEFENDANT FAILS TO FILE A STATEMENT OF CLAIM OF JUST COMPENSATION WITHIN THE TIME SPECIFIED IN 70-30-207, THE PLAINTIFF MAY OBTAIN AN ORDER FOR POSSESSION PROVIDED FOR IN SUBSECTION (1), SUBJECT TO THE CONDITION SUBSEQUENT THAT A PLAINTIFF'S PAYMENT INTO COURT SHALL BE MADE WITHIN 10 DAYS OF RECEIPT OF THE DEFENDANT'S STATEMENT OF CLAIM.~~

~~(2)(3)~~ However, where an appeal is taken by such defendant, the court or judge may, in its or his discretion, require the plaintiff before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking with sufficient sureties to be approved by the judge court and to be in such sum as the court or judge may direct, conditioned to pay the defendant any additional damages and costs over and above

the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

~~(3)(4)~~ The amount assessed by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment but may appeal in the same manner and with the same effect as if no money had been deposited or security given. In all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money so deposited and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment but may, notwithstanding, take and prosecute his appeal from such assessment; provided that

1 if the amount of such assessment is finally reduced on
 2 appeal by either party, such defendant who has received all
 3 or any part of the amount deposited shall be liable to the
 4 plaintiff for any excess of the amount so received by him
 5 over the amount finally assessed, with legal interest on
 6 such excess from the time such defendant received the money
 7 deposited, and the same may be recovered by action; and
 8 provided, further, that upon any appeal from assessment by
 9 the commissioners to a jury, the jury may find a less as
 10 well as an equal or greater amount than that assessed by the
 11 commissioners; and provided, further, that the court shall
 12 not order the delivery to any defendant of more than 75% of
 13 the money deposited on his account except upon posting of
 14 bond by such defendant equal to the amount in excess of 75%,
 15 with sureties to be approved by the court, to repay to the
 16 plaintiff such amounts withdrawn as are in excess of his
 17 final award in the proceedings."

18 Section 11. Section 70-30-313, MCA, is amended to
 19 read:

20 "70-30-313. Current fair market value. Current fair
 21 market value is the price that would be agreed to by a
 22 willing and informed seller and buyer, taking into
 23 consideration, but not limited to, the following factors:

24 (1) the highest and best reasonably available use of
 25 ~~the property~~ and its value for such use, ~~provided current~~

1 ~~use may not be presumed to be the highest and best use;~~

2 (2) the machinery, equipment, and fixtures forming
 3 part of the real estate taken; and

4 (3) any other relevant factors as to which evidence is
 5 offered."

6 NEW SECTION. Section 12. Repealer. Sections 70-30-204
 7 and 70-30-205, MCA, are repealed.

8 NEW SECTION. Section 13. Saving clause. This act does
 9 not affect rights and duties that matured, penalties that
 10 were incurred, or proceedings that were begun prior to the
 11 effective date of this act.

-End-

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